

1022.

APPROVAL, BONDS OF BLUFFTON VILLAGE SCHOOL DISTRICT, ALLEN COUNTY, \$15,815.23, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, December 20, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1023.

DELINQUENT TAXES—DEPUTY COUNTY TREASURER MAY NOT BE EMPLOYED BY COUNTY TREASURER AS COLLECTOR OF DELINQUENT PERSONAL TAXES—WHEN DELINQUENT LIST SHOULD BE READ.

SYLLABUS:

A deputy county treasurer may not legally be employed by the county treasurer as a collector of delinquent personal taxes.

If the delinquent list is not publicly read in the presence of the county commissioners, they may not legally authorize the county treasurer to employ collectors.

If the delinquent list is read at a session other than the September session, the county commissioners may legally authorize the treasurer to employ collectors.

COLUMBUS, OHIO, December 22, 1923.

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

GENTLEMEN:—Acknowledgment is hereby made of your recent communication which reads as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following questions:

Question 1: May a deputy treasurer be legally employed by the county treasurer as a collector of delinquent personal taxes when such treasurer is authorized by the county commissioners to employ delinquent tax collectors under the provisions of section 5696 G. C., and may such deputy receive his regular salary as a deputy treasurer and also a percentage upon the delinquent personal taxes collected under such employment?

Question 2: Section 5696 G. C. requires the county commissioners at each September session to cause the list of persons delinquent on the payment of personal property tax to be publicly read, if this list is publicly read by the county treasurer but not in the presence of the county commissioners, may the county commissioners legally authorize the county treasurer to employ collectors?

Question 3: If the delinquent list is read at a session other than the September session may the county commissioners legally authorize the treasurer to employ collectors?"

The employment of collectors to collect delinquent personal taxes, is authorized under the provisions of section 5696 of the General Code, which reads as follows:

"The county commissioners, at each September session, shall cause the list of persons delinquent in the payment on personal property to be publicly read. If they deem it necessary, they may authorize the treasurer to employ collectors to collect such taxes or part thereof, prescribing the compensation of such collectors which shall be paid out of the county treasury. All such allowances shall be apportioned ratably by the county auditor among all the funds entitled to share in the distribution of such taxes."

It will be noted that these collectors are to be employed by the treasurer upon authority granted by the county commissioners, and that said collectors assume the discharge of duties which the law imposes upon the treasurer.

Their legal character then is that of agents or deputies of the treasurer.

In the case of John S. Brady v. Tilden R. French, Treasurer, 9 O. D., page 195, a case involving the employment of a collector to collect delinquent personal taxes, the second paragraph of the syllabus reads as follows:

"The employment of a collector is an employment by the treasurer and not by the commissioners. The legal character of the person so employed is that of deputy treasurer. * * *"

It necessarily follows that both branches of your first question must be answered in the negative, for it is inconceivable that a deputy treasurer charged with the performance of certain duties, is eligible to appointment to the same position requiring the performance of the same duties at the same time. It is the duty of the treasurer to collect the taxes, and, as stated above, the duty of the deputy is to discharge the same duties imposed upon the treasurer. The answer to the second branch of your first question is therefore also answered in the negative.

Your second question concerns the requirements for the public reading of the delinquent tax list.

Section 5696 G. C. requires that the county commissioners cause the delinquent tax list to be publicly read at their September session, annually. They may then authorize the treasurer to employ collectors to collect the same, or any part thereof, prescribing the compensation of such collectors.

In the case of board of county commissioners of Hamilton County v. Arnold, 65 O. S., 479, in construing section 2858 R. S., (now section 5696 G. C.), the court say:

"The list spoken of in this section is the delinquent list; and the section is mandatory in so far as causing that list to be publicly read. The reading is for the information of the county commissioners, to enable them to judge and determine, from hearing the list read, whether they deem it necessary to authorize the treasurer to employ collectors to collect the list or any part thereof, and to prescribe the proper and reasonable compensation to be paid to such collectors for their services. Without hearing the delinquent list read, they would have no information upon which to determine whether they deem it necessary to authorize the treasurer to employ such collectors; neither could they determine whether the whole list should be collected by

collectors, or only a part thereof, and the remainder by the treasurer, as by other statutes provided; nor could they determine without hearing the list read, what compensation should reasonably be paid for the collections to be made. So that until the delinquent list is caused to be read, the commissioners can take no step toward authorizing the appointment of a collector, and any step taken by them before the reading of such list is absolutely void. The causing of the list to be publicly read is a condition precedent to authorizing the treasurer to employ such collector. It is the manner provided by statute for bringing the question of appointing collectors before them for consideration and determination. Statutes enacted for the protection of the public revenues, are usually not merely directory, but mandatory.

When the delinquent list has been so publicly read, the commissioners may at any time when they deem it necessary, authorize the treasurer to employ collectors to collect the same, or any part thereof; that is, to collect that list which has been so read, but such employment would hold good for that list only and would not extend to the next delinquent list. Each delinquent list must be read and an employment made to collect the same, but there can be no employment of collectors to collect future lists. The employment of such collectors cannot be turned into an office to be held to the end of the treasurer's term, or for any definite period. His employment is to collect the delinquent list which has been read, or some part thereof, and when that is done, his employment ends."

As the county commissioners without hearing the delinquent list read, would have no information upon which to determine whether they deem it necessary to authorize the treasurer to employ such collectors; and could not determine whether the whole list, or only a part thereof, should be collected by the collectors; and could not determine what compensation should reasonably be paid for the collections to be made, it follows that the commissioners can take no step toward authorizing the appointment of a collector, and any step taken by them before the reading of such list in their presence is absolutely void.

Your second question is therefore answered in the negative.

Your third question concerns the requirements as to the time of the public reading of the delinquent list.

This question has been before our supreme court in the case of the State, ex rel. Alcorn, v. Mittendorf et al., Commissioners, 102 O. S., page 229, and in construing section 5696 of the General Code, Chief Justice Marshal in rendering the unanimous opinion of the court said:

"It has already been decided by this court that the provisions of section 5696, General Code, are mandatory so far as the act of reading the list is concerned, and that the reading of such list is a condition precedent to the employment by the treasurer of a collector to collect such taxes, and also a condition precedent to the filing of any suit against any delinquent taxpayers on account of taxes levied on personal property. (Board of County Commissioners of Hamilton Co. v. Arnold, 65 Ohio St., 479). In that case the question whether the delinquent list could legally be publicly read after the close of the September session was not considered or decided.

It was of course the commissioners' duty to read the list during the September session, and having failed to read it during that session there is still a duty unperformed which must be performed before any collector can be employed and before a suit can be brought against the delinquents. Mani-

festly it would be unfair and unjust to permit the delinquents to escape their liability on account of this neglect. We are of the opinion that while the act itself, that is to say the act of reading the list, is mandatory and imperative, the time of the performance of the act is directory merely. While it was their duty to read it at the time prescribed by the statute, having failed in that it is still their duty to read it at the earliest moment thereafter, when their attention is called to it, and the provisions of section 5696 cannot be nullified by the neglect of the commissioners to perform their duty at the time required "

The syllabus of the above mentioned case reads as follows:

"1. By virtue of section 5696, General Code, the duty to publicly read the list of persons delinquent in the payment of taxes on personal property is mandatory.

2. The requirement of that section that the reading of the list occur at each September session of the board of county commissioners is directory merely, and the board of commissioners having failed to read the list during the September session it is their duty to read the list at a later date."

You are therefore advised upon the authority of the foregoing case that if the delinquent list is read at a session other than the September session, the county commissioners may legally authorize the treasurer to employ collectors.

Respectfully,

C. C. CRABBE,
Attorney-General.

1024.

TAXATION—SHARES OF STOCK IN JOINT STOCK LAND BANK SUBJECT TO TAXATION IN THIS STATE AS SHARES OF NATIONAL BANKS ARE TAXED.

SYLLABUS:—

Shares of stock in joint stock land banks are subject to taxation in this state as the shares of national banks are taxed.

COLUMBUS, OHIO, December 22, 1923.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication in which you enclose a letter from Hon. John A. Zangerle, Auditor of Cuyahoga County, Ohio, with reference to the taxation of shares of stock of joint stock land bank companies located in the city of Cleveland.

You also request me to advise the Commission whether such shares of stock are subject to taxation in this state as the shares of national banks are taxed.

You suggest that the answer to this question will involve an interpretation of section 9256 as amended in March, 1922, and section 9334 of the Federal statutes; also sections 5407 et seq. of the General Code of Ohio.