

powers as are expressly granted by law and such as are necessary to effectuate those powers so granted.

I appreciate the fact that the method of handling the funds of the school district which you suggest would perhaps, under present economic conditions, be laudable, but in determining the power of public officers in the handling of public funds the test is, of course, whether the power is lawful rather than whether it is laudable.

It follows, in my opinion, that funds in the bond retirement or sinking fund of a subdivision may not be expended for current operating expenses except pursuant to transfer to the general fund in accordance with the provisions of Section 5625-13, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

707.

FEE—COUNTY RECORDER AUTHORIZED TO CHARGE FEE FOR RE-
CORDING CERTIFICATE OF RELEASE OF TAX LIEN.

SYLLABUS:

Section 5696-1 of the General Code authorizes the county recorder to charge a fee of twenty-five cents for recording a certificate of release of a tax lien created by section 5694, General Code.

COLUMBUS, OHIO, April 22, 1933.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

"I wish you would render me an opinion as to whether or not under Section 5694 of the General Code of Ohio, a County Recorder should or should not charge a fee for the recording of a release of a tax lien filed under this Section, — that is where the Auditor has filed with the Recorder a duplicate showing that persons are indebted to the County for taxes other than real estate, and where one of said persons pays to the County Treasurer the taxes found to be due from him, and where the County Treasurer issues his receipt and release of such lien, is the Recorder entitled to a fee for the recording of such a release? The General Code Section in the last sentence says: 'No fee shall be charged by the Recorder for the services rendered under this section.' However, it was my interpretation that that provision would only apply to the original filing and recording of the same by the Recorder, and would have nothing to do with the release."

Section 5694, General Code, provides that after each October settlement, the auditor shall make a tax list and duplicates of all taxes, other than those upon real estate specifically as such, remaining unpaid and the list of such taxes returned as delinquent at such settlement. On December first the auditor shall

file one such duplicate in the office of the county recorder, which shall operate as a lien on the real estate located in the county. The section concludes:

“Such duplicate shall be kept by the county recorder and designated as the personal tax lien record, and indexed under the name of the person charged with such tax. No fee shall be charged by the recorder for the services required under this section.”

Your question is whether the last sentence of section 5694 prohibits the recorder from charging a fee for recording a release of such tax lien. The language of the statute forbids charging a fee “for the services required under this section.” Since section 5694 provides only for the recording of the lien and not for its release or discharge, the recorder’s services in the releasing of the lien are not services required under this section. It follows that the provision in question does not apply to releasing the lien. However, unless the statute prescribes a fee for the services in question, the recorder is entitled to none. *Jones, Aud., vs. Commissioners*, 57 O. S. 189.

Section 5696-1 provides that the county treasurer “may issue a certificate of release of the lien provided for in section 5694” in the event of payment, or under certain other circumstances. The section further provides:

“Such certificate may be filed and recorded with the recorder of the county in which the notice of lien has been filed, for which recording the recorder shall charge and receive a fee of twenty-five cents.”

In view of this specific statutory provision, it is my opinion that section 5696-1 of the General Code authorizes the county recorder to charge a fee of twenty-five cents for recording a certificate of release of a tax lien created by section 5694, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

708.

PENALTY—COUNTY AUDITOR UNAUTHORIZED TO ABATE PENALTY AGAINST REAL PROPERTY UNDER SECTION 5678, G. C.—TAXES PAID TO BANK FOR TRANSMITTAL TO COUNTY TREASURER NOT DELIVERED—EFFECT OF GOVERNMENTAL ORDER LIMITING BANK PAYMENTS—AGENCY DISCUSSED.

SYLLABUS:

The county auditor has no authority to abate a penalty which has been placed against an item of real property pursuant to the provisions of Section 5678, General Code, even though the taxpayer, during the time within which such tax might have been paid, had deposited with a bank for transmittal to the county treasurer, a sum of money sufficient to pay such tax without penalty but which the bank had not delivered by reason of an order limiting the payment by banks issued by the state or federal government.