

4562.

DELINQUENT TAXES—COUNTY TREASURER REQUIRED TO
KEEP TAX DUPLICATE OPEN FOR PAYMENT THEREOF
WHEN.

SYLLABUS:

Under the provisions of Amended Senate Bill No. 105, 115 O. L., Part 2, page 332, a taxpayer has the right, subject to the conditions of said act, to pay the delinquent real property taxes and assessments designated in the act at any time prior to September 1, 1935, and for the purpose of receiving payment of such delinquent taxes and assessments the county treasurer is required to keep his tax duplicate open until that date.

If, however, in any instance the county treasurer has made his return of delinquent lots and lands and has made his settlement with the county auditor before September 1, 1935, the taxpayer, under the provisions of said act and subject to its conditions, may nevertheless pay his delinquent taxes at any time before said date, which tax payments should be received and turned into the county treasury by the county auditor's pay-in order or draft in the manner provided by sections 2567 and 2645, General Code.

COLUMBUS, OHIO, August 20, 1935.

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

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

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

Amended Senate Bill No. 105, passed as an emergency measure, and approved by the Governor on December 13, 1934, provides that any person, firm or corporation charged with or legally authorized or required by law to pay real property taxes and assessments which have become delinquent at or prior to the August settlement in 1934, may, at any time prior to the first day of September, 1935, elect to pay the principal sum of such delinquent taxes and assessments, provided that such person shall be entitled to make such election only if all the taxes, assessments and penalties for the year 1934, then due and payable, have been paid.

Section 2 of the Act provides that if such person tenders to the county treasurer a sum equal to one hundred percent of the principal sum of such taxes and assessments so delinquent, less penalties and interest and other charges, the county treasurer shall accept and re-

ceive such amount in full payment of all such taxes and assessments, penalties and interest and other charges.

QUESTION: Will this provision, requiring the treasurer to accept tenders of delinquent taxes and current taxes, prior to the first day of September, 1935, have the effect of requiring the county treasurer to keep his books open until September 1st, 1935, notwithstanding the fact that other sections of the law require settlements to be made prior to that date?"

Amended Senate Bill No. 105, referred to in your communication, is an act passed by the 90th General Assembly at its second special session, under date of December 13, 1934, amending sections 1 and 2 and other designated sections of Amended Senate Bill No. 42, 115 O. L., 161, as said sections were amended by Amended Senate Bill No. 23, passed April 11, 1934, 115 O. L., Part II, page 228.

By section 1 of Amended Senate Bill No. 42, above referred to, it was provided that any person, firm or corporation charged with or legally authorized to pay real property taxes and assessments which had become delinquent at or prior to the August settlement in the year 1932, might at any time prior to the February settlement in the year 1934, elect to pay the principal sum of such delinquent taxes and assessments as provided in said act, "anything in the permanent statutes of this state to the contrary notwithstanding." It was further provided by this section, however, that no person should be entitled to make such election unless all taxes, assessments and penalties for the year 1932 and/or the first half of the year 1933 then due and payable had been paid.

By section 2 of this act, it was provided that if, within the time mentioned in section one of the act, any person availing himself of the provisions of the act, should tender to the county treasurer a sum equal to one hundred per centum of the principal sum of such taxes and assessments, so delinquent, less penalties, interest and other charges, the county treasurer was authorized to receive such amount in full payment of all such taxes, assessments, penalties, interest and other charges.

It will be noted that under the provisions of Amended Senate Bill No. 42, above stated, the taxpayer availing himself of the provisions of the act and subject to the conditions therein provided, could pay his delinquent taxes or assessments "at any time prior to the February settlement in the year 1934." In an opinion directed to the Tax Commission of Ohio under date of February 10, 1934, *Opinions of Attorney General, 1934, Vol. I, page 146*, it was held that the provisions of sections 2596 and 2683, General Code, fixing the time of the "February" settlement between the county auditor and county treasurer with respect to real property taxes as "on or before the fifteenth day of February in each year", were directory with respect to the time when such

settlement should be made. And thus construing these sections of the General Code it was further held in said opinion that section 1 of Amended Senate Bill No. 42 authorized the taxpayer to take advantage of the provisions of said act at any time prior to the actual date of the settlement between the county auditor and the county treasurer with respect to the real estate taxes collected by the county treasurer for the first half of the tax year 1933 even though the date of such settlement might be later than February 13, 1934.

By Amended Senate Bill No. 23, hereinbefore referred to, it was provided that any person, firm or corporation charged with or legally authorized or required by law or decree of court to pay real property taxes and assessments which became delinquent at or prior to the August settlement in the year 1933, or any person, firm or corporation holding a lien upon such real property might at any time prior to the first day of September in the year 1934 elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. It was further provided in this section that no person should be entitled to make such election unless all taxes, assessments and penalties for the year 1933 then due and payable had been paid. By section 2 of the act, it was further provided that if, within the time mentioned in section one of the act, the taxpayer should tender to the county treasurer a sum equal to one hundred per centum of the principal sum of such taxes and assessments, so delinquent, less penalties, interest and other charges, the county treasurer shall accept and receive such amount in full payment of all such taxes, assessments, penalties, interest and other charges.

Sections 1 and 2 of Amended Senate Bill No. 42, as the same were amended in Amended Senate Bill No. 23, were amended in Amended Senate Bill No. 105 so as to read as follows:

"Sec. 1. Any person, firm or corporation charged with or legally authorized or required by law or decree of court to pay real property taxes and assessments which have become delinquent at or prior to the August settlement in the year 1934, or any person, firm or corporation holding a lien upon such real property may at any time prior to the first day of September in the year 1935 elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. Provided, however, that no such person shall be entitled to make such election unless all taxes, assessments and penalties for the year 1934 then due and payable have been paid. Provided that in case a penalty and interest has been paid on account of delinquent taxes and/or assess-

ments, for the first or second half of the years 1932 and/or 1933, such penalty shall be refunded on order of the county auditor directed to the county treasurer provided the principal sum of such taxes and assessments is paid prior to the first day of September, 1935."

"Sec. 2. If, within the time mentioned in section one of this act, such person tenders to the county treasurer a sum equal to one hundred per centum of the principal sum of such taxes and assessments, so delinquent, less penalties, interest and other charges, (including interest charges under a prior undertaking entered into pursuant to this act,) the county treasurer shall accept and receive such amount in full payment of all such taxes, assessments, penalties, interest and other charges. Upon receiving such amount the treasurer shall give to the person making such tender a receipt in full for all taxes, assessments, penalties, interest and other charges for the year 1933 and any year prior thereto, and shall give to the auditor a certificate in such form as may be prescribed by the bureau of inspection and supervision of public offices, which shall operate as a remitter of the difference between the sum so received and the aggregate amounts charged on the tax duplicate or on the delinquent land tax list, or both, and shall be so treated in the next succeeding settlement between the auditor and treasurer."

From comparison of the provisions of these sections in Amended Senate Bill No. 105 with the provisions of said section 1 and 2 as amended in Amended Senate Bill No. 23, it appears that a like question to that presented in your communication is suggested with respect to the time that the county treasurer was required to keep his books open for the collection of taxes and assessments for the last half of the year 1933. However, so far as I am advised, no question of this kind arose and neither the courts nor this office has given any construction to the provisions of these sections in Amended Senate Bill No. 23 which is in any wise pertinent to the question presented in your communication which arises under the provisions of these sections as they are found in Amended Senate Bill No. 105.

Addressing the question presented in your communication, it is to be observed that aside from the consideration that the provisions of sections 2596 and 2683, General Code, fixing the time the so-called August settlement between the county auditor and county treasurer with respect to taxes collected for the last half of the preceding year as "on or before the tenth day of August", are directory and that such settlement may be made at a later date, said section 1, as amended in Amended Senate Bill No. 105, provides that any person, firm or corporation charged with or legally authorized or required by law to pay real property taxes and assessments, or any person, firm or corporation holding a lien upon such real property may at any time prior

to the first day of September in the year 1935 elect to pay the principal sum of the delinquent taxes and assessments therein specified without the payment of penalties and interest on such delinquent taxes and assessments, "anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding." It clearly appears from the provisions of these sections that any person entitled to avail himself of the privilege thereby conferred has an absolute right, subject to the conditions of the act, to pay his delinquent taxes or assessments without penalty or interest thereon any time prior to the first day of September, 1935. It follows from this, as well as from the pertinent provisions of section 2 of the act, above quoted, that the county treasurer is required to accept the payment of such delinquent taxes and assessments without penalty and interest prior to the first day of September, 1935. This duty to receive payment of such delinquent taxes and assessments at any time prior to September 1, 1935, imposed upon the county treasurer by the provisions of this act, can conceivably be performed only by accepting payment of such delinquent taxes and assessments upon the tax duplicate in his hands or by receiving payment of such delinquent taxes and assessments on a pay-in order or draft issued by the county auditor under the provisions of section 2567 and 2645, General Code. As to this, section 2567, General Code, provides that:

"Except moneys collected on the tax duplicate, the auditor shall certify all moneys into the county treasury, specifying by whom to be paid and what fund to be credited, charge the treasurer therewith and preserve a duplicate of the certificate in his office."

Section 2645, General Code, provides:

"Except payments of taxes charged on the tax duplicates and made before the return by the treasurer of the delinquent list for unpaid taxes and except advance payments of taxes, all payments of money into the county treasury shall be on the draft of the county auditor in favor of the county treasurer."

Although the provisions of sections 2567 and 2645, General Code, may, under special circumstances, be availed of for the payment and receipt of taxes which, though a lien on the real estate, have not yet been extended on the tax list and duplicate, *Opinions of the Attorney General*, 1931, Vol. I, page 507, it is not contemplated by the provisions of these sections that they should apply with respect to the payment of taxes or assessments standing upon the current or delinquent tax list and upon the duplicate thereof in the hands of the county treasurer. I am of the opinion, therefore, by way of specific answer to the

question presented in your communication, that the county treasurer is required to keep the duplicate in his hands open for the collection of the delinquent taxes and assessments specified in this act and of the current taxes and assessments and penalties for the year 1934 until the first day of September, 1935, and that he is not authorized or required to make a complete settlement with the county auditor prior to said date.

In this connection, it is to be noted, however, that under the provisions of Amended Senate Bill No. 105 the right of the taxpayer to pay his delinquent taxes at any time prior to September 1, 1935, is absolute so far as the time of payment is concerned. It follows from this that if in any particular instance the county treasurer has made his return of delinquent taxes and has made his settlement with the county auditor before September 1, 1935, a taxpayer availing himself of the provisions of Amended Senate Bill No. 105 and subject to its conditions may nevertheless pay his delinquent taxes at any time up to September 1, 1935; and in such case the payment of the taxes may be received into the county treasury by pay-in order or draft of the county auditor in the manner provided by sections 2567 and 2645, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4563.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$100,000.00.

COLUMBUS, OHIO, August 21, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4564.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$68,000.00.

COLUMBUS, OHIO, August 21, 1935.

State Employees Retirement Board, Columbus, Ohio.