

March 6, 2015

The Honorable Kelly A. Riddle
Noble County Prosecuting Attorney
406 North Street
Caldwell, Ohio 43724

SYLLABUS:

2015-008

1. Taxes charged against delinquent lands containing coal reserves may be determined to be uncollectible and stricken from the general tax list and duplicate of real and public utility property in the manner prescribed in R.C. 5721.46.
2. Delinquent lands containing coal reserves may not be stricken from the general tax list and duplicate of real and public utility property under R.C. 5721.46, even though the taxes charged against those lands have been determined to be uncollectible and stricken from the general tax list and duplicate of real and public utility property.
3. Taxes charged against delinquent lands containing coal reserves that have been stricken from the general tax list and duplicate of real and public utility property pursuant to R.C. 5721.46 may not be reinstated to the general tax list and duplicate of real and public utility property.
4. The phrase “by means of the remedies provided by law or otherwise” as used in R.C. 5721.46 means that a county treasurer may use the authority granted to her by law to determine that taxes charged against delinquent lands containing minerals or the rights thereto have become uncollectible, or, in the reasonable exercise of her discretion, may make such determination in another manner not already provided for by the laws of Ohio. A county treasurer shall exercise her authority to determine that taxes charged against mineral estates have become uncollectible within the limits of the law.

5. A county treasurer may use advertising to obtain contact information for the owners of delinquent lands when reasonably necessary to effect the exercise of the treasurer's express tax collection authority.



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OPINION NO. 2015-008

The Honorable Kelly A. Riddle
Noble County Prosecuting Attorney
406 North Street
Caldwell, Ohio 43724

Dear Prosecutor Riddle:

We have received your request for an opinion regarding delinquent taxes charged against coal reserves. In Noble County, parcels of coal reserves have been severed from the surface estate and taxed separately by the county auditor.¹ Taxes charged against a number of the severed coal reserves have not been paid for over two decades. The owners of the parcels show no intention of paying the delinquent amounts. Accordingly, you pose the following questions:

1. May delinquent taxes charged against coal reserves be determined to be uncollectible and such delinquency and corresponding parcel be stricken from the general tax list and duplicate in the same manner as prescribed for minerals in R.C. 5721.46?
2. Once stricken, is reinstatement possible? If reinstatement is possible, how would it be accomplished?

¹ Ohio law permits “the total interest in real property to be divided in such a way that the surface estate is severed from the mineral estate.” *Bath Twp. v. Raymond C. Firestone Co.*, 140 Ohio App. 3d 252, 256, 747 N.E.2d 262 (Summit County 2000); *see also Consolidation Coal Co. v. Bd. of Revision of Noble Cnty.: David Fleming, Noble Cnty. Auditor*, Nos. 85-D-291, et al. (Board of Tax Appeals June 30, 1988) (“[t]he auditor is required to assess all the real estate, including land, situated in the county at its taxable value.... ‘Land’ includes not only ownership of the fee in the soil (‘soil interests’), but also any minerals or rights to any minerals therein (‘mineral interests’)”). The ownership of the fee in the soil is commonly referred to as the “surface estate,” and the ownership of the minerals in the land is known as the “mineral estate.” *See generally Quarto Mining Co. v. Litman*, 42 Ohio St. 2d 73, 326 N.E.2d 676 (1975).

3. Since there is a high volume of “fracking” in the county, do you foresee any pitfalls that we may encounter if we strike these parcels?
4. What exactly is considered “by means of the remedies provided by law or otherwise” as set forth in R.C. 5721.46?
5. May the county treasurer use advertising as a means to obtain contact information for the owners of the parcels containing coal reserves?

R.C. 5721.46 Applies to Taxes Charged Against Delinquent Lands Containing Coal Reserves

Your first question asks whether taxes² charged against delinquent lands containing coal reserves may be determined to be uncollectible and, along with the corresponding parcel, be stricken from the general tax list and duplicate of real and public utility property in the same manner as prescribed for minerals in R.C. 5721.46. R.C. 5721.46 states:

If the county treasurer, by means of the remedies provided by law or otherwise, determines that delinquent lands containing or producing minerals or any rights to minerals, as separately listed and taxed from the fee of the soil pursuant to [R.C. 5713.04], [R.C. 5713.05], and [R.C. 5713.06], have appeared on the delinquent land list and duplicate for five years and that taxes charged against those minerals or rights to minerals have become uncollectible, the county treasurer shall certify that determination, together with the reasons for the determination, to the county board of revision and the prosecuting attorney. If the board of revision and the prosecuting attorney determine that the taxes are uncollectible, the board of revision and the prosecuting attorney shall certify their finding to the county auditor, who shall cause the taxes to be stricken from the general tax list and duplicate of real and public utility property and from the delinquent tax list and duplicate.

Before addressing your question, it is helpful to briefly describe the ways in which a county auditor compiles the tax lists and duplicates described in R.C. 5721.46.

² The taxes to which you refer are those taxes defined in R.C. 323.01(C):

“Taxes” means the total amount of all charges against an entry appearing on a tax list and the duplicate thereof that was prepared and certified in accordance with [R.C. 319.28], including taxes levied against real estate; taxes on property whose value is certified pursuant to [R.C. 5727.23]; recoupment charges applied pursuant to [R.C. 5713.35]; all assessments; penalties and interest charged pursuant to [R.C. 323.121]; charges added pursuant to [R.C. 319.35]; and all of such charges which remain unpaid from any previous tax year.

Each year, the county auditor is required to compile and certify a general tax list and duplicate of all the real and public utility property in the county. *See* R.C. 319.28. The list contains, among other things, the person or entity in whose name a property is listed, a description of the property, and the taxable value of the property, as assessed by the county auditor. *See id.*; R.C. 5713.01(B) (“[t]he auditor shall assess all the real estate situated in the county at its taxable value in accordance with [R.C. 5713.03], [R.C. 5713.31], and [R.C. 5715.01]... [T]he taxable values ... shall be placed on the auditor’s tax list and the county treasurer’s duplicate”); R.C. 5713.04 (“[e]ach separate parcel of real property shall be valued at its taxable value”); *Bd. of Educ. of the Dublin City Sch. Dist.*, Nos. 97-M-960, et al. (Board of Tax Appeals January 14, 2000) (“R.C. 5713.01 provides that the county auditor is the assessor of real estate in the county and shall appraise each lot or parcel ... at least once in each six year period; the taxable values derived are placed upon the auditor’s tax list and the treasurer’s duplicate”). The county auditor assesses and lists the taxable value of minerals in land, or the rights thereto, separately from the fee of the soil pursuant to R.C. 5713.04, R.C. 5713.05, and R.C. 5713.06. *See* R.C. 5713.04 (“[i]f the fee of the soil of a tract, parcel, or lot of land is in any person, natural or artificial, and the right to minerals therein in another, the land shall be valued and listed in accordance with such ownership in separate entries, specifying the interest listed, and be taxed to the parties owning the different interests”); R.C. 5713.05 (a county auditor’s responsibilities when the value of the minerals in any parcel of land increases or decreases); R.C. 5713.06 (explaining what the county auditor is to do when the surface and mineral estates have “been previously assessed for taxation in the name of the same person, but the title to the fee of the soil is in one or more persons and the title to such minerals ... is in another person”). If the owner of a parcel of land is unknown, the county auditor identifies the owner as “unknown” on the general tax list. *See* R.C. 319.28.

Once completed, the county auditor delivers a copy of the general tax list and duplicate to the county treasurer. *Id.* The county treasurer collects the taxes listed on the duplicate and settles with the county auditor, twice a year, for the amount collected. *See* R.C. 319.43(A) (requiring the county auditor to attend the settlements provided for in R.C. 321.24); R.C. 321.24(A) (requiring the county treasurer to settle with auditor on or before the fifteenth of February); R.C. 321.24(C) (mandating that the county treasurer settle with the auditor on or before the tenth day of August for all taxes and assessments “not included in the preceding February settlement”). Following the second settlement, the county auditor compiles, “in substantially the same form as the [general tax] list and duplicate,” a delinquent land list and duplicate that identifies “all delinquent lands in the auditor’s county.”³ R.C. 5721.011.

³ “Delinquent lands” are “all lands, including lands that are unimproved by any dwelling, upon which delinquent taxes ... remain unpaid at the time a settlement is made between the county treasurer and auditor pursuant to [R.C. 321.24(C)].” R.C. 5721.01(A)(1). “Delinquent taxes” include:

At the same time that the delinquent land list and duplicate are compiled, the county auditor creates a delinquent tax list pursuant to R.C. 5721.03(A). The delinquent tax list identifies delinquent lands “on which taxes have become delinquent at the close of the collection period immediately preceding the making of the delinquent land list” and duplicate. R.C. 5721.03(A). “Lands that have been included in a previously published delinquent tax list shall not be included in the delinquent tax list so long as taxes have remained delinquent on such lands for the entire intervening time.” *Id.*

R.C. 5721.46 authorizes a county treasurer to determine that taxes charged against delinquent lands containing minerals or the rights thereto, as taxed and listed separately from the fee of the soil, “have become uncollectible.” The county treasurer may make this determination only as to mineral estates that “have appeared on the delinquent land list and duplicate for five years.” R.C. 5721.46. The county treasurer certifies his determination to the county board of revision and prosecuting attorney, who, upon agreeing with the county treasurer’s finding, certify the information to the county auditor. *Id.* The county auditor then strikes the taxes “from the general tax list and duplicate of real and public utility property and from the delinquent tax list and duplicate.” *Id.*

You ask whether taxes charged against delinquent lands containing coal reserves may be determined to be uncollectible and whether such delinquency and corresponding parcel may be stricken from the general tax list and duplicate of real and public utility property pursuant to R.C. 5721.46. Your question poses two inquiries: (1) whether the taxes may be determined to be uncollectible and stricken from the general tax list and duplicate, and (2) whether the parcel of land against which those taxes are charged may also be stricken from the general tax list and duplicate.

First, we must determine whether coal reserves qualify as “minerals” for purposes of R.C. 5721.46. “Minerals” is not defined for purposes of R.C. 5721.46 or even more generally for purposes of R.C. Chapter 5721 or R.C. Title 57. Therefore, it is appropriate to accord the term its “common meaning.” R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449 (1983)

(1) Any taxes charged against an entry on the general tax list and duplicate of real and public utility property that were charged against an entry on such list and duplicate for a prior tax year and any penalties and interest charged against such taxes.

(2) Any current taxes charged on the general tax list and duplicate of real and public utility property that remain unpaid after the last day prescribed for payment of the second installment of such taxes without penalty, whether or not they have been certified delinquent, and any penalties and interest charged against such taxes.

R.C. 323.01(E).

("[a] legislative body need not define every word it uses in an enactment ... any term left undefined by statute is to be accorded its common, everyday meaning").

Merriam-Webster's Collegiate Dictionary 790 (11th ed. 2012) defines "mineral" as "a solid homogeneous crystalline chemical element or compound that results from the inorganic processes of nature; *broadly*: any of various naturally occurring homogeneous substances (as stone, coal, salt, sulfur, sand, petroleum, water, or natural gas) obtained usu[ally] from the ground." See also *Kurtz Bros., Inc. v. Roger W. Tracy, Tax Comm'r of Ohio*, No. 94-P-615 (Board of Tax Appeals December 15, 1995) (relying on the dictionary definition of "mineral" to conclude that topsoil is not a mineral within the meaning of R.C. 5739.01(E)(2)); *Black's Law Dictionary* 1009 (7th ed. 1999) (defining mineral as "[a]ny natural inorganic matter that has a definite chemical composition and specific physical properties that give it value"). The above definition lists coal⁴ as an example of a mineral. Thus, coal qualifies as a "mineral" under the term's common meaning.

Reading "minerals" to include coal for purposes of R.C. 5721.46 is consistent with the way in which the Revised Code's other provisions use that term.⁵ See, e.g., R.C. 5301.56(A)(4) ("[m]ineral' means gas, oil, coal, ... or another material or substance of commercial value that is excavated in a solid state from natural deposits on or in the earth"); R.C. 5713.04 (requiring the county auditor to list the interests in minerals separately from the interests in the fee of the soil); R.C. 5713.05 ("[i]f the value of any ... parcel of land containing ... coal ... or other minerals" decreases in value due to the minerals' exhaustion, the auditor determines the decrease in value if the surface estate and mineral estate are owned by the same person); 1946 Op. Att'y Gen. No. 1094, p. 508 (syllabus, paragraph 1) (title to coal shall be separately listed and taxed in accordance with G.C. 5560, predecessor of R.C. 5713.04). See generally *State v. Moaning*, 76 Ohio St. 3d 126, 128, 666 N.E.2d 1115 (1996) ("[i]t is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law"); *Brennaman v. R.M.I. Co.*, 70 Ohio St. 3d 460, 464, 639 N.E.2d 425

⁴ Coal is defined as "a black or brownish-black solid combustible substance formed by the partial decomposition of vegetable matter without free access of air and under the influence of moisture and often increased pressure and temperature that is widely used as a natural fuel." *Merriam-Webster's Collegiate Dictionary* 237 (11th ed. 2012).

⁵ R.C. 1514.01(B) excludes coal from the definition of "mineral" for purposes of R.C. Chapter 1514, which governs surface mining. R.C. 1514.01(B)'s definition of the term "mineral," however, is not dispositive for the purpose of this opinion. Rather, R.C. 1514.01(B) excludes coal from the definition of "mineral" for purposes of R.C. Chapter 1514 because coal mining is governed by R.C. Chapter 1513, not R.C. Chapter 1514. See generally *State ex rel. Belford v. Hueston*, 44 Ohio St. 1, 6, 4 N.E. 471 (1886) (the same word may have different meanings when it is used in different contexts); *accord State v. Dickinson*, 28 Ohio St. 2d 65, 70, 275 N.E.2d 599 (1971).

(1994) (“[i]t is a general axiom of statutory construction that once words have acquired a settled meaning, that same meaning will be applied to a subsequent statute on a similar or analogous subject”) (citing R.C. 1.42), *amended on other grounds by* 71 Ohio St. 3d 1211, 643 N.E.2d 138 (1994).

The use of the term “minerals” in R.C. 5713.04 and R.C. 5713.05 is especially significant, given that those statutes are explicitly referenced in R.C. 5721.46. *See* R.C. 5721.46 (“[i]f the county treasurer ... determines that delinquent lands containing or producing minerals or any rights to minerals, as separately listed and taxed from the fee of the soil pursuant to [R.C. 5713.04], [R.C. 5713.05], and [R.C. 5713.06], have ... become uncollectible, the county treasurer shall certify that determination ... to the county board of revision and the prosecuting attorney”). *See generally In re C.W.*, 104 Ohio St. 3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, at ¶7 (“[s]tatutes concerning the same subject matter must be construed in *pari materia*”); *D.A.B.E., Inc. v. Toledo-Lucas Cnty. Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, 773 N.E.2d 536, at ¶20 (statutes relating to the same subject matter must be read together in an attempt to “arrive at a reasonable construction giving the proper force and effect, if possible, to each statute”). R.C. 5713.04 states, in relevant part:

If the fee of the soil of a tract, parcel, or lot of land is in any person, natural or artificial, and the right to minerals therein in another, the land shall be valued and listed in accordance with such ownership in separate entries, specifying the interest listed, and be taxed to the parties owning the different interests.

As used in R.C. 5713.04, “minerals” includes coal reserves. *See* 1946 Op. Att’y Gen. No. 1094, p. 508 (syllabus, paragraph 1) (“[w]here the title to the fee of the soil of a tract of land and the title to the coal therein are separately owned, the title to the coal shall be listed and taxed according to [G.C. 5560, predecessor of R.C. 5713.04]”); *see also Consolidation Coal*, Nos. 85-D-291, et al. (Noble County Auditor utilized statutory power under R.C. 5713.04-.06 to value and assess mineral interests in coal parcels). R.C. 5713.05 states, in part:

If the value of any lot or parcel of land containing or producing petroleum, oil, natural gas, *coal*, ... *or other minerals* ... shall decrease within one year because of the exhaustion of any *such minerals* ..., the auditor shall determine the decrease in value of such lot or parcel in consequence of such exhaustion ..., if the fee of the soil and the right to the minerals is owned by and assessed for taxation against the same person. (Emphasis added.)

The phrase “or other minerals” in R.C. 5713.05 suggests that the items previously identified in the statute—petroleum, oil, natural gas, and coal—constitute specific examples of minerals. *See generally State v. Aspell*, 10 Ohio St. 2d 1, 4, 225 N.E.2d 226 (1967) (relying on the legal maxim *eiusdem generis* to state that “where in a statute terms are first used which are confined to a particular class of objects having well-known and definite features and characteristics, and then afterwards a term is conjoined having perhaps a broader signification, such latter term is, as

indicative of legislative intent, to be considered as embracing only things of similar character as those comprehended by the preceding limited and confined terms”); *accord Moulton Gas Serv., Inc. v. Zaino*, 97 Ohio St. 3d 48, 2002-Ohio-5309, 776 N.E.2d 72, at ¶14 (“[w]hen there is a listing of specific terms followed by a catchall word or phrase which is linked to the specific terms by the word ‘other,’ and the statute is to be strictly construed, we apply the doctrine of *ejusdem generis*”). Moreover, the phrase “any such minerals” refers to those listed items, which includes coal. Therefore, it is clear from the language of the statute that coal is a mineral for purposes of R.C. 5713.05.

R.C. 5721.46 authorizes a county treasurer to determine that taxes charged against delinquent lands containing minerals or the rights thereto, as taxed and listed separately from the fee of the soil, “have become uncollectible.” “Minerals” includes coal for purposes of R.C. 5721.46. Accordingly, in response to the first part of your question, we conclude that taxes charged against delinquent lands containing coal reserves may be determined to be uncollectible and stricken from the general tax list and duplicate of real and public utility property in the manner prescribed in R.C. 5721.46. *See generally* Ohio Legislative Service Comm’n, Sub. S.B. 59 (Final Bill Analysis 1997) (striking the taxes from those lists “clear[s] the mineral rights of the delinquency and stop[s] the accrual of interest on the delinquent taxes”).

The second part of your first question asks whether delinquent lands containing coal reserves against which taxes are charged may also be stricken from the general tax list and duplicate pursuant to R.C. 5721.46. R.C. 5721.46 authorizes a county auditor to strike the *taxes* from the general tax list and duplicate, but it does not authorize a county auditor to strike from that list the land against which the taxes are charged. *Cf.* 1999 Op. Att’y Gen. No. 99-054, at 2-331 (recognizing that a taxpayer’s name may not be removed from the delinquent tax list and duplicate pursuant to R.C. 5719.06 even when personal property taxes are determined uncollectible and stricken from the list pursuant to the statute). R.C. 319.28(A) requires a county auditor to include all taxable real and public utility property on the general tax list and duplicate. *But see* R.C. 5713.07 (requiring county auditor to compile a separate list of real property exempt from taxation); R.C. 5713.08 (“[t]he county auditor shall make a list of all real and personal property in the auditor’s county that is exempted from taxation”). Neither R.C. 5721.46 nor any other statute in the Revised Code authorizes the removal of such lands from the general tax list and duplicate after taxes charged against those lands are stricken from the tax list in accordance with R.C. 5721.46. *See generally* 1983 Op. Att’y Gen. No. 83-045, at 2-176 (“[t]he auditor’s authority to make changes in the tax list and duplicate is, as a general rule, very limited”).

Accordingly, we conclude that delinquent lands containing coal reserves may not be stricken from the general tax list and duplicate of real and public utility property under R.C. 5721.46.

Taxes May Not Be Reinstated After the County Auditor Strikes the Taxes from the General Tax List and Duplicate of Real and Public Utility Property Pursuant to R.C. 5721.46

Your second question asks whether the taxes and parcels against which those taxes are charged may be reinstated once they have been stricken from the general tax list and duplicate of real and public utility property under R.C. 5721.46. If we conclude that reinstatement is authorized, you ask by what method the reinstatement may occur. Because we have concluded that the land against which the taxes are charged may not be stricken from the general tax list and duplicate, it is only necessary to address whether the taxes charged against the land may be reinstated. 1965 Op. Att’y Gen. No. 65-20 addressed a similar question about personal property taxes. We find the conclusion in that opinion persuasive and applicable to the circumstances here.

In 1965 Op. Att’y Gen. No. 65-20, the Attorney General addressed whether personal property taxes could be reinstated after having been stricken from the delinquent personal property tax list and duplicate pursuant to R.C. 5719.06. *See generally* R.C. 319.29 (requiring a county auditor to compile a general tax list and duplicate of personal property); R.C. 5719.04 (the county auditor shall compile a delinquent tax list and duplicate “of all taxes, except those upon real estate, remaining unpaid”). Similar to R.C. 5721.46, R.C. 5719.06 authorizes a county treasurer to determine that delinquent personal property taxes have become uncollectible. *See* R.C. 5719.06; 1965 Op. Att’y Gen. No. 65-20, at 2-52 (quoting the version of R.C. 5719.06 in effect at the time of the opinion).⁶ Once the county treasurer’s determination has been certified to the county auditor by the county board of revision and prosecuting attorney, R.C. 5719.06 requires the auditor to strike the taxes from the tax list and duplicate. Nothing in R.C. 5719.06 or any other statute provides the county treasurer, or any other public official, “authority to charge back or re-enter delinquent taxes on the duplicate after they have been stricken.” 1965 Op. Att’y Gen. No. 65-20, at 2-53 to 2-54. Accordingly, 1965 Op. Att’y Gen. No. 65-20, at 2-54 concluded that “[o]nce an amount of personal property tax has been determined to be uncollectible and stricken from the delinquent personal property tax list and duplicate ..., there is no authority whereby said amount of tax may be reinstated.”

Similar to the circumstances presented in 1965 Op. Att’y Gen. No. 65-20, we find within the Revised Code no statute authorizing taxes charged against delinquent mineral estates to be reinstated once those taxes have been stricken pursuant to R.C. 5721.46. Accordingly, we conclude that when taxes charged against delinquent lands containing coal reserves have been stricken from the general tax list and duplicate of real and public utility property pursuant to R.C. 5721.46, those taxes may not be reinstated to the general tax list and duplicate of real and public

⁶ The version of R.C. 5719.06 in effect at the time 1965 Op. Att’y Gen. No. 65-20 was issued does not differ in any material respect from the statute’s current version.

utility property. Given that reinstatement is not permitted, it is unnecessary for us to address the second part of your question concerning the method by which reinstatement may occur.

Consequences of Striking Parcels from the General Tax List and Duplicate

Your third question asks whether there are any pitfalls to striking parcels containing coal reserves from the general tax list and duplicate of real and public utility property. Your concern stems from the fact that there is a high volume of “fracking” in the county. We have already concluded that land containing minerals may not be stricken from the general tax list and duplicate of real and public utility property. Thus, it is unnecessary for us to address this question.

The Meaning of the Phrase “By Means of the Remedies Provided by Law or Otherwise” in R.C. 5721.46

Your fourth question asks what the phrase “by means of the remedies provided by law or otherwise” means for purposes of R.C. 5721.46. R.C. 5721.46 states, in relevant part: “If the county treasurer, *by means of the remedies provided by law or otherwise*, determines that ... taxes charged against [delinquent lands containing minerals] ... have become uncollectible, the county treasurer shall certify that determination [and the reasons therefor] to the county board of revision and the prosecuting attorney.” (Emphasis added.)

The phrase “by means of the remedies provided by law or otherwise” describes the methods by which the county treasurer may determine that taxes charged against mineral estates have become uncollectible. The county treasurer has two alternatives in this regard: the county treasurer (1) may determine that the taxes are uncollectible “by means of the remedies provided by law” or (2) may “otherwise” determine that the taxes are uncollectible. *See generally Merriam-Webster’s Collegiate Dictionary* 872 (11th ed. 2012) (“or” is “used as a function word to indicate an alternative ..., the equivalent or substitutive character of two words or phrases”).

First, the county treasurer may make the determination by using any remedies provided to her by law. *See generally City of Westlake v. Rice*, 100 Ohio App. 3d 438, 442-43, 654 N.E.2d 18 (Cuyahoga County 1995) (interpreting similar language in R.C. 713.13); 2015 Op. Att’y Gen. No. 2015-005, slip op. at 18 (“when a particular statute instructs a public official to act ‘according to law,’ the public official must look outside that statute and consider all other applicable laws in ascertaining the scope of her powers”). The Revised Code provides several means by which a county treasurer may attempt to collect delinquent taxes. *See, e.g.*, R.C. 323.25 (authorizing the county treasurer to institute foreclosure proceedings against delinquent lands or to determine that taxes are uncollectible pursuant to R.C. 5721.46); R.C. 323.49 (authorizing the county treasurer to become receiver ex officio of the property’s rents, issues, and income); R.C. 5721.021 (a board of county commissioners may authorize a “county treasurer to employ collectors to collect the delinquent taxes on the [delinquent land] list”). If, after exercising the authority granted by any one of those statutes, the county treasurer determines that

the taxes charged against a parcel of land containing minerals are uncollectible, the county treasurer has made that determination “by means of the remedies provided by law.”

As an alternative to using the remedies provided by law, R.C. 5721.46 authorizes the county treasurer to “otherwise” determine that taxes charged against mineral estates have become uncollectible. *Merriam-Webster’s Collegiate Dictionary* 879 (11th ed. 2012) defines “otherwise” to mean “in a different way or manner ... something or anything else.” The term “otherwise” therefore authorizes a county treasurer to determine that the taxes are uncollectible by any means other than those already available to the treasurer by law.⁷ When the General Assembly confers authority upon a county officer “to perform a particular function without specific directions as to the manner of performing that function, the officer or entity may exercise a reasonable discretion in its performance.” 2012 Op. Att’y Gen. No. 2012-018, at 2-154 (quoting 1994 Op. Att’y Gen. No. 94-066, at 2-324); *see also Jewett v. Valley Railway Co.*, 34 Ohio St. 601, 608 (1878) (“[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner”).

Accordingly, we conclude that the phrase “by means of the remedies provided by law or otherwise” as used in R.C. 5721.46 means that a county treasurer may use the authority granted to her by law to determine that taxes charged against delinquent lands containing minerals or the rights thereto have become uncollectible, or, in the reasonable exercise of her discretion, may make such determination in any other manner not already provided for by the laws of Ohio. A county treasurer shall exercise her authority to determine that taxes charged against mineral estates have become uncollectible within the limits of the law.

The County Treasurer May Use Advertising to Obtain Contact Information for the Owners of Delinquent Lands

Your fifth question asks whether a county treasurer may use advertising to obtain contact information for the owners of delinquent lands containing coal reserves. A county treasurer is under no obligation to search for and obtain accurate contact information for the owners of delinquent lands. Instead, under R.C. 323.13, the responsibility to provide accurate contact information is that of the owners of the property. *See* R.C. 323.13 (“[a] change in the mailing address of any tax bill shall be made in writing to the county treasurer”); *Nix v. Robertson*, Butler

⁷ A county treasurer’s authority in this regard is not unlimited. Rather, a county treasurer shall exercise her authority to determine that taxes charged against mineral estates have become uncollectible within the limits of the law. For example, a county treasurer may not loan county funds to assist in determining the collectability of taxes. *See* R.C. 321.23 (“[a] county treasurer who loans money belonging to the county ... shall forfeit and pay, for each such offense, not less than one hundred nor more than five hundred dollars, to be recovered in an action in the name of the state, for the use of the county”).

App. No. CA2012-08-157, 2013-Ohio-777, at ¶¶11-12 (acknowledging the responsibility of an owner of real property to notify the county treasurer of any change in the address listed on the tax records on file in the treasurer's office); *Lorain Cnty. Treasurer v. Schultz*, Lorain App. No. 08CA009487, 2009-Ohio-1828, at ¶12 (county treasurer was not responsible for searching and locating owner's address prior to foreclosing on the owner's real property; duty was on owner to "inform the [t]reasurer of his current mailing address for taxation"). Nevertheless, a county treasurer may use advertising to obtain contact information for the owners of delinquent lands when reasonably necessary to effect the exercise of the treasurer's express tax collection authority.

County treasurers are creatures of statute, entitled to exercise only those powers expressly granted by the General Assembly or "such implied powers as are necessary to carry into effect the powers expressly delegated." *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84, 89, 197 N.E. 112 (1935). The Revised Code provides a county treasurer extensive authority to collect taxes charged against real and public utility property. *See, e.g.*, R.C. 323.13 (a county treasurer may send an additional tax bill to the owners of delinquent lands); R.C. 323.25 (a county treasurer may institute a foreclosure proceeding against delinquent lands or proceed to strike the delinquent taxes pursuant to R.C. 5721.46); R.C. 323.31 (a county treasurer may enter into delinquent tax contracts to collect delinquent taxes); R.C. 323.61 (a county treasurer may open tax receiving offices); R.C. 5721.021 (under certain circumstances, a county treasurer, upon authorization from a board of county commissioners, may employ collectors to collect taxes charged against lands on the delinquent land list and duplicate). Under R.C. 321.261, a county treasurer may draw upon the "treasurer's delinquent tax and assessment collection fund" to pay for expenses related to the collection of those taxes. R.C. 321.261(A), (A)(1) (authorizing the county treasurer to use the fund "in connection with the collection of delinquent real property ... taxes and assessments").

Although none of the Revised Code's statutes expressly authorizes a county treasurer to use advertising to obtain contact information for the owners of delinquent lands, such authority may be reasonably implied as part of the county treasurer's tax collection powers. R.C. 323.13, for example, authorizes a county treasurer to "prepare and mail to each person in whose name [delinquent] property ... is listed an additional tax bill showing the amount of delinquent taxes appearing on such duplicate against such property." Without accurate contact information for the owner of delinquent land, a county treasurer is unable to send an additional tax bill as authorized by R.C. 323.13. Therefore, a county treasurer may take reasonable measures to obtain accurate contact information for the property owner. Such measures may include the use of advertising. *Cf., e.g.*, 1976 Op. Att'y Gen. No. 76-070, at 2-245 ("when a board of education, in the exercise of its discretion determines that the use of advertisements is necessary to find qualified personnel, authority for such expenditures may be inferred from the board's general grant of power" to employ teaching and non-teaching personnel). Costs incurred in purchasing the advertising may be paid from the treasurer's delinquent tax and assessment collection fund. *See* R.C. 321.261(A)(1).

Furthermore, R.C. 7.11 confers discretionary authority upon a county treasurer to publish, in a newspaper of general circulation, “advertisements of general interest to the taxpayers as the ... county treasurer ... deems proper.” Advertisements designed to encourage or facilitate the payment of delinquent taxes qualify as “advertisements of general interest to the taxpayers” under R.C. 7.11. *See* 1952 Op. Att’y Gen. No. 1235, p. 209 (syllabus, paragraph 1) (“[u]nder the provisions of [G.C. 6252, predecessor to R.C. 7.11], the county officers named therein, have authority to publish such advertisements as they deem proper, designed to encourage the payment of delinquent real estate taxes”); 1936 Op. Att’y Gen. No. 5209, vol. I, p. 267, at 273 to 274 (G.C. 6252, predecessor to R.C. 7.11, authorizes a county treasurer to run an advertisement requesting taxpayers to pay delinquent taxes). Obtaining contact information for owners of delinquent lands is a necessary step in attempting to secure from those owners payment of delinquent taxes. Therefore, a county treasurer may use the discretionary authority granted in R.C. 7.11 to publish an advertisement aimed at obtaining contact information for the owners of delinquent lands. A county treasurer shall exercise such discretionary authority “within reasonable bounds.” 1936 Op. Att’y Gen. No. 5209, vol. I, p. 267, at 274 (“the discretion reposed by the statute in the officials enumerated is not to be abused. Courts have frequently and unanimously held that where the legislature has conferred discretion on public officers, such discretionary authority is to be exercised within reasonable bounds”).

Accordingly, we conclude that a county treasurer may use advertising to obtain contact information for the owners of delinquent lands when reasonably necessary to effect the exercise of the treasurer’s express tax collection authority.

Conclusions

In sum, it is our opinion, and you are hereby advised that:

1. Taxes charged against delinquent lands containing coal reserves may be determined to be uncollectible and stricken from the general tax list and duplicate of real and public utility property in the manner prescribed in R.C. 5721.46.
2. Delinquent lands containing coal reserves may not be stricken from the general tax list and duplicate of real and public utility property under R.C. 5721.46, even though the taxes charged against those lands have been determined to be uncollectible and stricken from the general tax list and duplicate of real and public utility property.
3. Taxes charged against delinquent lands containing coal reserves that have been stricken from the general tax list and duplicate of real and public utility property pursuant to R.C. 5721.46 may not be reinstated to the general tax list and duplicate of real and public utility property.

4. The phrase “by means of the remedies provided by law or otherwise” as used in R.C. 5721.46 means that a county treasurer may use the authority granted to her by law to determine that taxes charged against delinquent lands containing minerals or the rights thereto have become uncollectible, or, in the reasonable exercise of her discretion, may make such determination in another manner not already provided for by the laws of Ohio. A county treasurer shall exercise her authority to determine that taxes charged against mineral estates have become uncollectible within the limits of the law.
5. A county treasurer may use advertising to obtain contact information for the owners of delinquent lands when reasonably necessary to effect the exercise of the treasurer’s express tax collection authority.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General