

4723.

DELINQUENT TAXES—COUNTY TREASURER MAY NOT ACCEPT CURRENT TAX WITHOUT ONE-FIFTH OF DELINQUENCIES—MAY NOT ACCEPT DELINQUENT TAXES WITHOUT PAYMENT OF CURRENT TAXES.

COLUMBUS, OHIO, November 3, 1932.

*SYLLABUS:*

1. *When delinquent taxes stand charged upon the tax list and duplicate in the possession of the county treasurer, he has no authority to accept payment of the current tax against which no penalty has been assessed without at the same time receiving not less than one-fifth of the amount of the delinquencies so standing charged.*

2. *When there stands charged upon the delinquent tax duplicate in the possession of the county treasurer delinquent taxes against a certain item of real property as well as an item of current taxes he is not authorized to accept payment of delinquent taxes without at the same time receiving payment of the item of current taxes.*

COLUMBUS, OHIO, November 2, 1932.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Your recent request for opinion is as follows:

“May a county treasurer accept the payment of the current tax, that is the June 1932 tax without the delinquent tax? There are many people who purchased properties and have assumed the payment of the current tax, then when they go to pay the current tax, there are delinquent taxes also due, and they are unable to pay the current taxes under the method we use in Stark County unless delinquent taxes are paid, or under some circumstances if taxes have become delinquent in the August settlement of 1930, they are required to pay only one-fifth of the delinquency with the current taxes.

The question also arises as to the power of the treasurer to accept delinquent taxes without the current taxes. For example, a man comes in on the 15th day of July, and offers to pay all his back taxes but none of the current tax that is due. May the treasurer legally accept the back taxes without the current tax?”

Under date of May 31, 1930, I rendered an opinion on part of the matters referred to in your inquiry, which opinion is reported in Volume II, Opinions of the Attorney General for 1930, p. 831, in which I held as stated in the syllabus:

“A county treasurer is authorized to accept the payment of current taxes upon property where such taxes are tendered unaccompanied by the amount of the delinquent taxes and penalties upon such property, but such acceptance by the treasurer does not in any way

affect the obligation of the treasurer to proceed to collect such delinquent taxes in the manner provided by law.”

This opinion was rendered construing Section 2655 of the General Code, as it existed at that time. Section 2655, General Code, as it then existed, read as follows:

“If a person desires to pay only a portion of a tax charged on real estate otherwise than in such installments, such person shall pay a like proportion of all the taxes charged thereon for state, county, township or other purposes, exclusive of road taxes. No person shall be permitted to pay one or more of such taxes without paying the others in like proportion, except only when the collection of a particular tax is legally enjoined.”

This section was amended by the legislature in 1931, to read as follows:

“No person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate, except only when the collection of a particular tax is legally enjoined.”

You will notice that the express inhibition in the section is, that “no person shall be permitted to pay less than the full amount of the taxes charged,” whereas, in the former section bearing the same number, the statute specifically stated that the taxpayer shall be permitted to pay a portion of the tax. From the language of Section 2655, it might be deduced that the legislature sought to remedy a condition which has existed in the State of Ohio, where a taxpayer, while satisfied as to the legality of the assessment of the general taxes, was willing to pay them, but had some objection to a special tax, and for such reason was unwilling to pay it. If it were not for the provisions of Section 2672, General Code, enacted by the same legislature, such reason might be persuasive. However the language of Section 2672, General Code, is:

“Delinquent taxes, assessments and penalties, charged on the tax duplicate against any entry of real estate may be paid in installments at and during five consecutive semi-annual tax-paying periods, whether such real estate has been certified as delinquent or not. *Such installment payments may be made at the times provided by law for the payment of current taxes and shall be received with the full amount of current taxes then payable and not otherwise.* Each installment payment shall be applied to the items of taxes, assessments and penalties so charged in the order in which such items became due. Each installment shall be not less than one-fifth of the total principal amount of the taxes, assessments and penalties so charged, unless the collection of a particular tax has been legally enjoined, together with the full amount of interest, if any, accrued on the unpaid portion of the principal at the time of the payment of such installments, unless, at any payment period, less than one-fifth of such total principal amount remains unpaid, in which event the entire balance, together with interest shall be paid; the last of such installments shall also include the cost of certification of such land as

delinquent, as prescribed by Section 5713 of the General Code." (Italics the writer's.)

Such section authorizes the payment of taxes in installments but specifically provides the manner in which such installments may be paid. I would call your attention to the language which I have italicized. Such section expressly provides that the installments shall be paid in no other manner than as set forth in the section; that is, when there stands charged against the taxpayer or an item of real property owned by him he may pay in the first installment the total amount of current taxes and in addition thereto one-fifth of the delinquencies and similarly in each of the four subsequent installments the current tax installment and one-fifth of the delinquencies, the last of which payments includes the cost of certification. Since your inquiry is as to the payment of taxes in installments other than as authorized by this section it is apparent that I must answer your inquiry in the negative.

In passing, I might call your attention to my opinion rendered under date of February 2, 1932, being No. 4019, in which I held, in construing the provisions of Section 2672, General Code, that by reason of the limitation contained in Section 3 of Am. S. B. 326 as enacted by the 89th General Assembly, Section 2672, General Code, did not authorize the receipt of any delinquent taxes in installments other than those becoming delinquent at and after the August 1930 settlement.

Specifically answering your inquiries it is my opinion that:

1. When delinquent taxes stand charged upon the tax list and duplicate in the possession of the county treasurer, the county treasurer has no authority to accept the payment of the current tax against which no penalty has been assessed without at the same time receiving not less than one-fifth of the amount of the delinquencies so standing charged.

2. When there stands charged upon the delinquent tax duplicate in possession of the county treasurer delinquent taxes against a certain item of real property as well as an item of current taxes the county treasurer is not authorized to accept the payment of delinquent taxes without at the same time receiving payment of the item of current taxes.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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4724.

APPROVAL, REORGANIZATION PLAN OF THE SECURITY-HOME  
TRUST COMPANY OF TOLEDO, OHIO.

COLUMBUS, OHIO, November 3, 1932.

HON. IRA J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—You recently submitted to me what is denominated as "The Reorganization Plan of the Security-Home Trust Company" of Toledo, Ohio, with the request that I give you my opinion as to whether any legal difficulties would be encountered in the consummation of the plan. Since receiving your letter, and after conferences with the representatives of the reorganization