

<i>Lessee</i>	<i>Valuation</i>
Sidney R. Courtad.....	\$916 67
Nathan Coon.....	366 67
J. W. Custenborder.....	350 00
John C. Biteman.....	433 34
C. W. Buchanan.....	100 00
Fred L. Kolter and Eli Burk.....	500 00
Louis Burkhardt.....	716 67
Rachel A. Berry and Susie Batdorf.....	566 67
John A. Wenger.....	350 00

Each and all of the above mentioned leases are executed under the authority of Section 471, General Code, as amended by the Conservation Act, passed by the 88th General Assembly.

Upon examination of the provisions of said leases, I find that the same are in conformity with the provisions of said section of the General Code and with other statutory provisions relating to leases of this kind.

Said leases, and each of them are accordingly hereby approved by me as to their legality and form, which approval is evidenced by my authorized signature on said leases, and upon the duplicate and triplicate copies thereof.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2010.

SPECIAL ASSESSMENTS—CERTIFIED TO COUNTY TREASURER FOR
COLLECTION—PAYABLE IN SEMI-ANNUAL INSTALLMENTS—
WHEN PENALTY ACCRUES.

1. *Where, under existing provisions of law, special assessments are certified to the county treasurer for collection in the same manner and at the same time as other taxes, such assessments are payable in two semi-annual installments at the December and June collections, respectively.*

2. *The penalty prescribed for the non-payment of assessments only accrues with respect to the portion thereof remaining unpaid at the tax settlement succeeding the tax collection period at which such portion was payable.*

COLUMBUS, OHIO, June 23, 1930.

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

GENTLEMEN :—Your recent communication reads :

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

Section 3892, G. C., as amended, 112 O. L. 61, relating to collection of municipal special assessments provides that such assessments shall be certified to the county auditor, stating the amount and the time of payment, and the county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner and at the same time as other taxes are collected. It further provides that each in-

stallment of such assessments remaining unpaid after becoming due and collectible shall be delinquent and bear the same penalty as delinquent taxes.

Section 5678, G. C., as amended, 113 O. L. 500, provides that if one-half of the taxes and assessments charged against an entry of real estate is not paid on or before the 20th day of December in that year, or collected by distress or otherwise prior to the February settlement, a penalty of 10% shall be added to such one-half of such taxes and assessments on the duplicate.

Question 1. In the case of municipal special assessments certified under the provisions of Section 3892, G. C., is it the duty of the county auditor to divide such assessments into two payments, one-half due in December and the other one-half due in June, or may he enter each installment of such assessments as a whole and subject the same to a penalty as provided in Section 3892 and Section 5678, G. C., if not paid or collected prior to the February settlement?

Question 2. In the case of a county special assessment for roads and ditches, is the county auditor required to divide the same into two parts, or may he enter on the duplicate each installment of such assessments as a whole and subject the same to a penalty as provided by Section 5678, G. C., if not paid prior to the February settlement?"

Section 5678, General Code, as amended by the 88th General Assembly, to which you refer, provides:

"If one-half the taxes and assessments charged against an entry of real estate is not paid on or before the twentieth of December, in that year, or collected by distress or otherwise prior to the February settlement, a penalty of ten per cent thereon shall be added to such half of said taxes and assessments on the duplicate. If such taxes and assessments and penalty, including the remaining half thereof, are not paid on or before the twentieth of June next thereafter, or collected by distress or otherwise prior to the next August settlement, a like penalty shall be charged on the last half of such taxes and assessments. The total of such amounts shall constitute the delinquent taxes and assessments on such real estate to be collected in the manner prescribed by law."

As stated in your communication, Section 3892, relating to the certification of special assessments by municipalities as amended by the 87th General Assembly, expressly authorizes the enforcement of such collection by the county treasurer by enforcing penalties upon delinquent installments for such amounts as are provided in delinquent taxes. In so far as your questions are concerned, the only change in the amendment of Section 5678 was the inclusion of the words "and assessments" following the word "taxes" as used in five different places in said section.

In this connection, it will further be observed that Section 5679 was amended at the same time and in the same manner.

In the absence of specific authority, the rule is that penalties can not be imposed for the nonpayment of assessments, that is, unless statutes specially provide for the taxing of penalties on assessments such can not be collected by reason of the general laws providing for the collection and assessment of penalties for the nonpayment of the general tax. *State vs. Sanzenbacher*, 13 O. C. C. (N. S.) 356.

It may be stated that the collection of assessments does not involve the sovereign governmental function of the state in the same manner that the collection of taxes is an exercise of such power and it has been held that the collection of assessments is subject to the statute of limitations, whereas such limitations do not run against the

collection of a tax. *Hartman vs. Hunter*, 56 O. S. 175; *Wasteny vs. Schott*, 58 O. S. 410.

From the foregoing it appears that in the amendment of Sections 5678 and 5679, hereinbefore referred to, the Legislature was attempting to provide generally for penalties to be collected upon unpaid assessments. In other words, by general language in said amendments it was attempting to do for assessments generally that which it had theretofore provided for in the amendment of Section 3892, with reference to municipal assessments.

In connection with your inquiry it must be kept in view that assessments are made in pursuance of special statutes which authorize the levying of a given assessment for a specific purpose. Section 3892 and its related sections, of course, refer to municipal assessments. Section 3298-14b relates to road assessments. Also, Section 6923 of the General Code relates to road assessments being made by the county commissioners. Section 6460 has reference to assessments being made for the construction of county ditches and Section 1214-1 of the General Code, authorizes the board of county commissioners to make the assessments provided in Section 1214 of the General Code, in behalf of the Director of Highways.

It will be observed that for the most part, if not all, the statutes authorizing assessments to be made by the county commissioners provide that they shall be made in semi-annual installments. Likewise in most instances, provision is made for the issuance of bonds and of course the assessments are collected for the purpose of retiring the same and the time is fixed for the payment thereof with reference to the obligations arising under the bond issues.

Section 2653 of the General Code, expressly authorizes a person to pay all of the tax on or before the twentieth day of December or one-half thereof before such date and the remaining half thereof on or before the twentieth day of June. In other words, there are statutes other than Sections 5678 and 5679, which definitely authorize the payment of taxes in installments. The sections last mentioned provide the penalties for the non-payment of the taxes in accordance with such installments as are otherwise authorized.

Section 3892 of the Code, which authorizes the municipality to utilize the county treasurer in the collection of municipal assessments, provides that the treasurer shall collect them "in the same manner and at the same time as other taxes are collected." In my view, as soon as certification is made to the county treasurer, the municipality loses the right which it originally had by virtue of Section 3815 of the Code, to specify the precise time assessments shall be paid and whether they shall be in annual or semi-annual installments. It is quite obvious to me that council could not designate some time other than the regular tax paying time for the payment of assessments and thereby require the county treasurer to keep his office open for the payment thereof at such time. Similarly, I believe that the certification to the county treasurer requires that the assessments if designated by council as annual, be divided and collected in installments in the same manner as taxes. This conclusion is in accord with that reached by my predecessor in an opinion reported in Opinions of the Attorney General for 1927, at page 1721, of which the third branch of the syllabus is as follows:

"By the provisions of Section 3892 of the General Code, as amended in Amended Senate Bill No. 27 (87th General Assembly), the installments of assessments when certified to the county auditor are to be collected in the same manner and at the same time as other taxes are collected and, accordingly, one-half of each annual installment is payable with the December collection and the other half thereof with the June collection. Interest upon unpaid installments should be computed as to each half from the last day for the payment of taxes."

The same reasoning is applicable in the case of assessments for county roads and ditches. In the statutes applicable thereto, provision is made that the assessments be certified to the county treasurer and collected as other taxes, but in the case of county ditches and roads it is to be observed that provision is already made that the assessments shall be payable in semi-annual installments.

It follows, from what has been said, that the penalty provided by Section 5678 of the Code would only accrue on one-half of the annual assessment if it be not paid prior to the February settlement.

Accordingly, and in specific answer to your inquiry, I am of the opinion that:

(1) Where, under existing provisions of law, special assessments are certified to the county treasurer for collection in the same manner and at the same time as other taxes, such assessments are payable in two semi-annual installments, at the December and June collections, respectively.

(2) The penalty prescribed for the non-payment of assessments only accrues with respect to the portion thereof remaining unpaid at the tax settlement succeeding the tax collection period at which such portion was payable.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2011.

MUNICIPALITY—MAY NOT ERECT SANITARY PLANT WITHOUT APPROVAL OF STATE HEALTH DEPARTMENT.

SYLLABUS:

A municipality may not acquire, erect or construct a "sanitary plant," as defined in Section 4467, General Code, for the treatment, purification or disposal of either liquid or solid wastes of such municipality without first securing the approval of the State Department of Health.

COLUMBUS, OHIO, June 23, 1930.

HON. CHARLES A. NEAL, *Director of Health, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge your request for my opinion, which request is as follows:

"Section 4469, G. C., requires the approval of the State Department of Health of plans for a sanitary plant designed to dispose of sewage, garbage, night-soil, dead animals, etc. This section is part of an act passed by the General Assembly, April 16, 1900, and is found in Vol. 94, page 342, Ohio Laws. The same act is also found at page 383 in the same volume.

By referring to this act you will note that it is complete in that it contains, in addition to the authority to provide such a plant, for the financial program including the issuing of bonds, sinking fund and maintenance.

Since this act was passed but two sets of plans have been submitted to the State Department of Health for approval. Both of these came from the city of Lakewood. The first set of plans was considered and approved by this department, as the legislation definitely stated that the plant was being constructed under the provisions of this act. The second set of plans is now in the department for approval, but so far as I can determine the legislation does not specify that the plant is being constructed under the provisions of Section 4467, et seq. of the General Code.