

show the various funds of such subdivision other than the funds to be created by transfer. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, and the rate of the levy and what portion thereof is within and without the fifteen mill limitation, and on the debit side the total appropriations that may be made therefrom. There shall be attached thereto a summary which shall be known as the 'Official certificate of estimated resources,' which shall state the total estimated resources of each fund of the subdivision other than funds to be created by transfer. Before the end of the year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure."

In these sections provision is made for certifying the action of the budget commission, and also the contents of said certificate. It is expressly commanded that said certificate "shall show the various funds of such subdivision."

It is evident that the function of the budget commission is to determine amounts and make adjustments to conform to limitations. In an opinion of this department, Opinions of the Attorney General, 1919, page 1014, it is stated:

"The budget commission deals with amounts, \* \* \*. Having fixed amounts, its action is certified to the county auditor who determines rates."

When said commission has adjusted the amount of the general fund within the limitations prescribed by law, its duty is then to certify said amount to the taxing authority of the subdivision.

Section 5625-39, General Code, provides that on or before the first day of each year, the taxing authority of the subdivision shall pass an annual appropriation measure; and Section 5625-30, General Code, provides that the total amount of appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom as certified by the budget commission or in case of appeal by the Tax Commission of Ohio, and that appropriations shall be made from each fund only for the purposes for which such fund is established.

It is, therefore, my opinion that when the county budget commission had reduced and adjusted the amount to be levied within the fifteen mill limitation for debt charges, and the amount for other purposes, it had exhausted its power, and it was therefore without legal authority to prescribe to the village of Bremen how the amount "for other purposes" should be expended.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1326.

TAXES—COLLECTED ON THE DELINQUENT LIST AFTER THE AUGUST SETTLEMENT BETWEEN THE COUNTY AUDITOR AND TREASURER  
—MAY NOT BE DRAWN UPON PREVIOUS TO JANUARY 1st.

*SYLLABUS:*

*After the August settlement between the county auditor and treasurer, taxes collected on the delinquent list are carried into the February settlement, and advancements under*

*the provisions of Section 2692, General Code, may not be made thereon previous to January 1st.*

COLUMBUS, OHIO, December 2, 1927.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of your recent communication which reads as follows:

“We respectfully request from your office an opinion regarding the following situation.

At the close of the tax collecting period on July 20, 1927, there were a great number of delinquent and unpaid taxes; consequently the revenue in this county seems insufficient to meet the operating expenses for 1927 in several of the subdivisions.

Since July 20th, the day the books were closed, there have been numerous taxes paid in, which taxes should have been paid before July 20th, and were moneys that could lawfully have been used for 1927 operating expenses.

The treasurer of this county has received such delinquent taxes charging the interest and penalties as required by law, and now the Board of Education of Akron, Ohio, demands that under the provisions of G. C. 2571 and G. C. 2692 respectively, that they be allowed to receive a share of this money collected after July 20th.

The settlement with the subdivisions has been made and the money distributed and we are in doubt as to whether we may pay over any further money until the first of 1928.”

It is evident from your statement that the county treasurer's tax duplicate was closed July 20th, returned to the county auditor, and that said auditor has made settlement with said treasurer, and distribution of taxes has been made to the several taxing subdivisions.

The county treasurer therefore could not receive any more taxes until he had been given another duplicate by the county auditor.

“The duplicate of taxes, delivered into the possession of the county treasurer \* \* \* annually is his warrant of authority for collecting the several levies found against the entries thereon, together with penalties and interest that may accrue.” *Hoglen vs. Cohan*, 30 O. S. 436-443.

Section 2596, General Code, provides in part as follows:

“On or before the fifteenth day of February and on or before the tenth day of August of each year, the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of taxes with which such treasurer is to stand charged. At each August settlement, the auditor shall take from the duplicate previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the property on which such delinquent taxes are charged as described on such duplicate and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes could not be collected. \* \* \*”

It is clear from this section that at the August settlement the treasurer should have returned his tax duplicate to the county auditor.

The settlements made by the treasurer with the auditor are the means by which the auditor ascertains what taxes have been collected and what taxes are delinquent, in order that he may from the books returned by the treasurer, make up a complete list of delinquent taxes and furnish the treasurer a duplicate of it to be used in making collections from parties owing the taxes listed as shown on the delinquent duplicate.

Section 5694, General Code, reads as follows:

"Immediately after each semi-annual settlement in August, the county auditor shall make a tax-list, and duplicate thereof, of all the taxes on personal property remaining unpaid, as shown by the treasurer's books, and the delinquent record as returned by him to the auditor. Such tax list and duplicate shall contain the name, valuation, and amount of personal property taxes, with ten per cent penalty thereon, due and unpaid. He shall deliver the duplicate to the treasurer on the fifteenth day of September, annually."

This section authorizes and directs the county auditor to place in the county treasurer's hands "on the 15th day of September annually," a duplicate of "all the taxes on personal property remaining unpaid."

Section 5695, General Code, provides as follows:

"The county treasurer shall forthwith collect the taxes and penalty on the duplicate by any of the means provided by law, and the funds so collected shall be distributed in proper proportions to the appropriate funds."

Section 5678, General Code, provides as follows:

"If one-half the taxes 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 on the duplicate. If such taxes 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. The total of such amounts shall constitute the delinquent taxes on such real estate to be collected in the manner prescribed by law."

It is assumed that the money now in the hands of the county treasurer is what he has collected on his delinquent personal property duplicate; and also in delinquent taxes on real estate with the penalty as provided in Section 5678, General Code.

Your question is as to whether any distribution to taxing subdivisions may be made of this money collected as delinquent taxes previous to January 1, 1928.

Under the provisions of Section 2596, General Code, the county auditor is required to make settlement with the county treasurer twice annually; namely, on or before February 15th, and on or before August 10th.

Section 2602, General Code, reads as follows:

"The auditor shall open an account with each township, city, village, and special school district in the county, in which, immediately after his semi-annual settlement with the treasurer in February and August of each year, he shall credit each with the net amount so collected for its use.

On application of the township, city, village, or school treasurer the auditor shall give him a warrant on the county treasurer, for the amount then due to such treasurer, and charge him with the amount of the warrant.

\* \* \*

It is noted that under the provisions of the above section, the county auditor *immediately after his settlements* with the county treasurer shall credit each taxing subdivision with the net amount collected for its use; and on application of the treasurer of the taxing subdivision the auditor shall give him a warrant for the amount "*then due.*"

It is clear that the authority herein granted to the county auditor to make distribution by giving credit on his books immediately after his semi-annual settlements, and on application to issue his warrant for the amount then due, refers specifically to the two distributions at the times of his settlements with the county treasurer. I find no statutory authority for distribution at other times, except by way of advancement. It seems evident that delinquent taxes collected after the August settlement by the county treasurer and auditor may not be distributed to the several taxing subdivisions previous to January first, but that said money must be carried into the succeeding February settlement. Advance payments are authorized by Section 2692, General Code, which reads:

"When the local authorities by resolution so request the county auditor shall draw, and the county treasurer shall pay on such draft to township, city and village treasurers, and the treasurer of any board of education and the treasurer of any other political subdivision or taxing district whose funds derived from taxes or other sources are payable by law to the county treasurer any money that may be in the county treasury to the accounts of such local authorities respectively and lawfully applicable to the purposes of the current fiscal year in which such request is made; provided that the county auditor and treasurer shall retain any amounts that may be needed to make such payments of the obligations of the local political subdivisions or taxing districts as are required by law to be paid directly by the county authorities."

This section before its amendment, 111 O. L. 378, contained the provision that the advance payments could be made

"from June twentieth and December twentieth to the date of the semi-annual distribution, each year, any sum not exceeding two-thirds of the current collection of taxes for such local authorities, respectively."

The section at present does not contain said limitation as to time, but does provide that the advance payment must be made from "any money that may be in the county treasury to the accounts of such local authorities respectively, and lawfully applicable to the purposes of the current fiscal year in which such request is made."

As before stated herein, taxes collected on the delinquent list after the August settlement are carried into the February settlement and advancements are therefore made from the February settlement. Advancements, however, cannot be made until after January first, and then only for purposes of the current fiscal year, which in this instance will be 1928. Advancements for 1928 can not be made until after January first.

In an opinion of this department, Opinions of the Attorney General, 1923, page 849, it was held that:

"A municipality may not demand and receive an advance of taxes under Section 2692, General Code, for the purpose of paying operating expenses for the preceding fiscal half year."

You also mention Section 2571, General Code. Said section is not applicable in answering your question, as it is special in its nature, applying only to counties and to the particular situation provided for therein.

It is therefore my opinion that after the August settlement between the county auditor and treasurer, taxes collected on the delinquent list are carried into the February settlement, and advancements under the provisions of Section 2692, General Code, may not be made thereon previous to January first.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1327.

APPROVAL, LEASE TO ROOMS IN COLUMBUS, OHIO, FOR USE OF THE DEPARTMENT OF PUBLIC WELFARE, COMMISSION FOR THE BLIND.

COLUMBUS, OHIO, December 3, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a lease between The Joyce Building Realty Company and The Department of Public Welfare, Commission for the Blind, State of Ohio, covering the West or rear 95 feet, more or less, of the third floor of the Joyce Realty Building, located at the Southwest corner of Chestnut and High streets, Columbus, Ohio, for the term of one year, one month and ten days, beginning November 20, 1927, and ending December 31, 1928, at a stipulated rental of two thousand (\$2,000.00) dollars for the term of said lease.

I note that the lease is signed "The Joyce Bldg. Realty Company, By Zinn & Robbins, Attorneys in Fact."

You have submitted a copy of a Power of Attorney dated March 15, 1922, wherein The Joyce Building Realty Company constitutes and appoints Zinn & Robbins to negotiate, execute, acknowledge and deliver for it leases upon all the storerooms and upper floors in The Joyce Realty Building.

You have also submitted an encumbrance estimate dated November 13, 1927, bearing number 1271, covering the sum of two hundred (\$200.00) dollars, to cover the rental on the above described property for the period from November 20th to December 31, 1927.

The encumbrance estimate bears the certificate of the Director of Finance under date of December 2, 1927, to the effect that there are unencumbered balances legally appropriated sufficient to pay the above item.

Upon examination of said lease and the other papers submitted therewith, I am of the opinion that the same are in proper legal form and therefore approve the same.

I am returning herewith the lease, encumbrance estimate, power of attorney and other papers submitted in this connection.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*