

enable you to make proper application of the statute to such several items as they may arise, in light of such facts as may be presented to you touching the nature and character of the item in question as a prepaid item or otherwise.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4970.

DELINQUENT TAXES—WHEN COLLECTED DISTRIBUTED TO FUNDS FOR WHICH LEVIED.

SYLLABUS:

Taxes which in former years were levied by a municipal corporation or other political subdivision for the use of some particular fund or funds of such political subdivision, should be distributed to the fund or funds for which they were levied, when the same are thereafter collected as delinquent taxes.

COLUMBUS, OHIO, December 7, 1935.

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

GENTLEMEN:—This is to acknowledge the receipt of your communication in which you request my opinion “as to the proper manner to be followed by the county auditor in distributing delinquent collections of real estate taxes levied in former years”. The question here presented is one with respect to the distribution of delinquent taxes of a municipal corporation or other political subdivision in the county which were levied in former years and which are collected by the county treasurer at the same time he collects current taxes of such political subdivision on the real property duplicate made up for his year.

Section 2655, General Code, provides that 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. By reason of this statutory provision, the county treasurer is not authorized or required to collect current taxes due and payable on the duplicate in his hands unless delinquent taxes on the property are paid in the full amount thereof or by installments in the manner indicated by section 2672, General Code, which provides:

“Delinquent taxes, assessments and penalties charged on the tax duplicate against any entry of real estate may be paid in install-

ments 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."

The question here arises by reason of the fact that some of the county auditors in the several counties of the state in making their statement of the semi-annual apportionment or distribution of taxes collected for municipal corporations and other political subdivisions make such apportionment or distribution not only of and with respect to the several kinds of taxes levied by or accruing to such political subdivision as "source of receipts", but make such apportionment or distribution to the several funds of the political subdivision established by it under section 5625-9, General Code, and in making their distribution of general taxes collected for the political subdivision, distribution of such taxes is made to the several tax levy funds of the political subdivision and as between such funds on the basis of tax levies for the current year, notwithstanding the fact that some of the general taxes thus distributed are delinquent taxes which were levied by the political subdivision in former years. Since the taxes thus collected and distributed as delinquent taxes were in many cases levied by the political subdivision for its several tax levy funds in different proportions from that indicated by the levy for current taxes collected for the political subdivision and included in the distribution, it is apparent that the distribution of delinquent taxes to the several funds of the political subdivisions in the same proportion in which the current taxes are distributed to such funds, will, in such case, have the effect of augmenting one or more of the funds of the political subdivision by the distribution to such fund or funds of delinquent taxes which were not levied for such funds, and of depriving one or more of the funds of the political subdivision of taxes which were levied for these funds in former years. For instance, it might well be that in the years 1932, 1933 and 1934 the tax levy made by some particular municipal corporation for the use of the general fund of the corporation was sixty percent of the tax levies made by the corporation, while in the year 1935 sixty percent or more of the tax levies of the corporation may be for debt charges. In this situation, it is evident that some of the taxes which were levied by the municipal corporation in the years 1932, 1933 and 1934 for the use of the general fund of the corporation will be distributed to and carried into the bond retirement fund and/or sinking fund of the corporation if such taxes, when the same are collected as delinquent taxes, are distributed on the same basis and in the same proportions as are the current taxes collected on the 1935 duplicate.

The question presented in your communication requires a consideration of certain sections of the Budget Law, so-called, and of other related sections

of the General Code. Section 5625-9, General Code, which was originally enacted under date of April 13, 1927, as a part of an act "providing for levying of taxes by local subdivisions and their method of budget procedure", provides:

"Each subdivision shall establish the following funds:

- (a) General fund.
- (b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.
- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- (d) A special fund for each special levy.
- (e) A special bond fund for each bond issue.
- (f) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose.
- (g) A special fund for each public utility operated by a subdivision.
- (h) A trust fund for any amount received by a subdivision in trust for any lawful purpose."

Section 5625-3, General Code, which was enacted as a part of the same act, provides that the taxing authority of each subdivision is authorized to levy taxes annually, subject to the limitation and restrictions of the act (G. C. §§ 5625-1 to 5625-39), on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and the acquisition or construction of permanent improvements. This section further provides that the taxing authority of each subdivision and taxing unit shall, subject to the limitations and restrictions of the act, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes and certificates of indebtedness of such subdivision and taxing unit including levies in anticipation of which the subdivision or taxing unit has incurred indebtedness. This section provides further that all taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws, rules and regulations as are prescribed for the assessment and collection of county taxes. Section 5625-4, General Code, provides that the taxing authority of each subdivision shall divide the taxes levied into the following separate and distinct levies:

1. The general levy for debt charges within the ten mill limitation.

2. The general levy for current expense within the ten mill limitation.
3. Special levies authorized by the provisions of this act within the ten mill limitation.
4. The general levy for debt charges authorized by law or by vote of the people outside of the ten mill limitation.
5. Other special or general levies authorized by law or by vote of the people outside of the ten mill limitation."

Section 2689, General Code, which was enacted as a part of the Intangible and Personal Property Tax Law of the year 1931, provides for the payment by the county treasurer of taxes collected by him for the local political subdivisions to the treasurer or other authorized officer of such political subdivision. This section reads as follows:

"Immediately after each settlement with the county auditor, on demand, and presentation of the warrant of the county auditor therefor, the county treasurer shall pay to the township treasurer, city or village treasurer, the treasurer of the school district, or the treasurer of any legally constituted board authorized by law to receive the funds or proceeds of any special tax levy, or other properly designated officers delegated with authority to receive such funds or proceeds by such boards and subdivisions, all moneys in the county treasury belonging to such boards and subdivisions."

The following provision in section 5625-3, General Code, above referred to, is more immediately pertinent in the consideration of the question here presented:

"The proceeds of any tax levied by or for any subdivision when received by the fiscal officer thereof shall be deposited in its treasury to the credit of the appropriate fund."

No distinction is made in the provision of section 5625-3, General Code, above quoted, between the proceeds of taxes which are collected as delinquent taxes and the proceeds of taxes collected on the current duplicate, and under this provision of section 5625-3, General Code, all taxes of the political subdivision, whether the same are collected as current or delinquent taxes, are required to be deposited in the treasury of such political subdivision to the credit of the fund for which such taxes were levied.

This, apparently, was the view entertained by my immediate predecessor with respect to this question. In Opinion No. 4142, directed by this office to you under date of March 10, 1932, *Opinions of the Attorney General, 1932*,

Vol. I, page 355, it was held, as indicated in the syllabus to said opinion, as follows:

“If, prior to the year 1931, taxes were assessed for the benefit of a public library, which taxes were permitted to become delinquent, when such taxes are collected during any subsequent year by the county treasurer, they must be credited to such public library and paid out in the manner provided by law.”

In this opinion the following was said with respect to the question there presented:

“When the tax for school district public libraries was assessed, it was assessed for a specific purpose, and became a part of the budget which was used for the purpose of determining the tax rate. Even though the item may have apparently lost its identity when the tax item against a particular parcel of real estate appeared on the tax duplicate as a total of the taxes assessed against such parcel, this assessment nevertheless was a particular tax for a particular purpose and could be used for no other.

I do not believe the mere fact that this tax became delinquent would in any manner affect the right of the tax levying authority or the subdivision for which the tax was assessed from receiving the funds when and as collected.”

Section 5 of Article XII of the State Constitution provides that “No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied”. In the cases of *State, ex rel., vs. Edmondson*, 89 O. S., 351, 363, and *State, ex rel., vs. Zangerle*, 103 O. S., 566, this constitutional provision was recognized as applicable to tax levies made pursuant to law by political subdivisions for local purposes. In the case of *Cleveland vs. Zangerle, Auditor*, 127 O. S., 91, it was apparently held that this constitutional provision applies only to the levy and distribution of general taxes for state purposes, and that this constitutional provision did not apply as against the provisions of a statute which provided for the distribution of the proceeds of a tax levied for local purposes.

With respect to the question here presented, it is to be noted that there is no statutory provision which requires that taxes levied for a particular purpose by a municipal corporation or other political subdivision shall, when the same are thereafter collected as delinquent taxes, be distributed otherwise than to the fund for which they were levied. And in this view, I am of the opinion, by way of specific answer to the question presented in your

communication, that delinquent taxes which were levied by a political subdivision for particular purposes and for the use of particular funds of a political subdivision should, when the same are collected, be distributed to the funds of the political subdivision for which they were levied.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4971.

LIQUOR CONTROL DEPARTMENT—MAY NOT CHARGE
FEE FOR REGISTRATION OF SALESMEN EMPLOYED BY
“K” PERMIT-HOLDERS TO SELL WHISKEY WARE-
HOUSE RECEIPTS.

SYLLABUS:

The Department of Liquor Control cannot impose and charge a fee for the registration of salesmen employed by holders of “K” permits to sell warehouse receipts for whiskey.

COLUMBUS, OHIO, December 7, 1935.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter which reads as follows:

“An examination of the records and accounts of the Department of Liquor Control, State of Ohio, discloses that the Department is now licensing, under section 6064-15 of the General Code, and under permit K, dealers, distillers’ agents or liquor industry brokers to buy, sell, exchange, deliver or otherwise traffic in bonded warehouse receipts for spirituous liquor and directly or indirectly to finance the purchase of the same. In many instances, the K permit holder has on his staff salesmen who act as his agents in the above transactions.

The Department has attempted to register such agents and have charged a fee of \$5.00 for such registration.

We desire your official opinion as to whether the Department of Liquor Control has authority to collect a \$5.00 registration fee for agents of K permit holders and if such fee has been legally collected, to whom should it be distributed under Section 6064-29 of the General Code?”