

to indemnity, since the happening of such an accident will be of disadvantage to him, and will subject him to direct pecuniary loss, for which such policies afford him a useful and desirable means of indemnity." (Words in parenthesis ours.)

In circumstances such as you describe, the county commissioners or the county which they represent, would not be subject to any direct pecuniary loss so far as the public or third parties are concerned, if an accident should occur, growing out of the use of these boilers, and for that reason there is no basis for indemnity or for a contract of insurance purporting to indemnify the commissioners or the county for injuries to the public or to property of third persons.

By "public liability and property damage insurance" is meant, I take it, indemnity for injuries to third persons and property other than that owned by the county itself. I do not assume in this opinion, to pass on the question of whether or not a board of county commissioners may lawfully insure against losses incurred by reason of injuries to property owned by the county.

I am therefore of the opinion that the expenditure of public funds to pay the premium on a policy of insurance of this nature is improper and unauthorized.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4640.

PAYMENT OF TAXES — COUNTY TREASURER MAY NOT RECEIVE  
GENERAL REAL ESTATE TAXES WITHOUT PAYMENT OF SPECIAL ASSESSMENTS.

SYLLABUS:

*The term "taxes" as used in section 2655, General Code, as amended in the enactment of Amended Senate Bill No. 326 by the 89th General Assembly, includes special assessments; and under the provisions of this section county treasurers are not permitted to receive payment of general taxes on real estate without at the same time receiving payment of installments of special assessments on such property certified to the county treasurer, unless the collection of such special assessments has been legally enjoined.*

COLUMBUS, OHIO, September 22, 1932.

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

GENTLEMEN:—This is to acknowledge the receipt of your communication in which you call my attention to the case of *State, ex rel. Brown, vs. Cooper, Treasurer*, 123 O. S. 23, and request my opinion as to whether the word "taxes" as used in section 2655, General Code, as amended in the enactment of Amended Senate Bill No. 326 by the 89th General Assembly, includes assessments, and whether this section of the General Code as amended is to be construed to mean that no person shall be permitted to pay less than the full amount of taxes and assessments charged and payable on real estate, where the collection of a par-

ticular tax or assessment on such property has not been legally enjoined.

In deciding the case of *State, ex rel. Brown, vs. Cooper, Treasurer, supra*, the Supreme Court of this state had before it the then provisions of section 2655, General Code, as well as the provisions of section 3892, General Code. These sections read as follows:

Sec. 2655.

"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."

Sec. 3892.

"When any special assessment is made, has been confirmed by council, and bonds, notes or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the clerk of the council, on or before the second Monday in September, each year, shall certify such assessment to the county auditor, stating the amounts and the time of payment. 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, and when collected, pay such assessment, together with interest and penalty, if any, to the treasurer of the corporation, to be by him applied to the payment of such bonds, notes or certificates of indebtedness and interest thereon, and for no other purpose. For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes. \* \* \*"

In the case above cited, the Supreme Court, following earlier decisions of that court, noted that special assessments are a mode of taxation or species of tax and held that the duty enjoined upon county treasurers by section 3892, General Code, to collect installments of special assessments upon real estate in the same manner and at the same time as other taxes are collected, is mandatory; and that special assessments upon real estate for public improvements are taxes within the meaning of sections 2655 and 3892, General Code, above quoted. The court in this case further held that by virtue of the provisions of section 2655, General Code, county treasurers were not permitted to receive payment of general taxes without at the same time receiving payment of installments of special assessments for public improvements certified to the county treasurers for collection.

Section 3892, General Code, has not been amended since the decision of the Supreme Court in the case above cited. However, as noted by you, section 2655 was amended in the enactment of Amended Senate Bill No. 326 by the 89th General Assembly. And, in this connection, it is noted that sections 2649, 2653 and 2654, the same being likewise a part of the chapter relating to the duties of the county treasurer with respect to taxes, were amended by the 89th General Assembly in the enactment of Amended Senate Bill No. 323, which act went into effect June 29, 1931. As amended, section 2649, General Code, provides that

the office of the county treasurer shall be kept open for the collection of real property taxes and assessments and public utility property taxes from the time of delivery of the duplicate to the treasurer until the twenty-first day of December and from the first day of April until the twenty-first day of June. Section 2653, General Code, provides that each person charged with real property taxes and assessments or public utility property taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereof 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 next ensuing. By section 2654, General Code, it is provided that when such taxes charged against the property of a person are so paid by installments, each such payment shall be apportioned among the several funds for which taxes have been assessed in such manner as the tax commission shall prescribe. Section 2655, General Code, now reads 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.”

Addressing myself to the question presented in your communication, I see no reason why a more limited meaning should be given to the term “taxes”, as the same is used in section 2655, General Code, as amended, than was given to this term by the Supreme Court of this state as the term was employed in the original provisions of this section as the same read at the time of the decision by the Supreme Court of the case above cited. And I therefore conclude that special assessments upon real estate for public improvements are taxes within the meaning of section 2655, General Code, as amended, and of section 3892, General Code.

Likewise, no reason is perceived why any different or more limited meaning should be given to the provisions of section 2655, General Code, as amended, with respect to the duty of the taxpayer to pay special assessments charged and payable on real estate owned by him at the same time he pays other taxes on such property. On the contrary, the provisions of sections 2649 and 2653, General Code, as amended in the enactment of Amended Senate Bill No. 323, further manifest the legislative intent that special assessments on real property are to be paid in the same manner and at the same time that other taxes on such property are paid.

I am therefore of the opinion, by way of specific answer to your question, that the term “taxes” as used in section 2655, General Code, as amended, includes special assessments and that, under the provisions of this section, county treasurers are not permitted to receive payment of general taxes on real estate without at the same time receiving payment of installments of special assessments certified to the county treasurer, unless the collection of such special assessments is legally enjoined.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*