

OPINION NO. 74-068

Syllabus:

When the Board of Tax Appeals, pursuant to the provisions of R.C. 323.17, extends the time for the payment of real estate property taxes to a day certain, the county treasurer is not authorized to accept payment of the taxes without the penalty noted in R.C. 5719.17 after the expiration of the day certain. (Opinion No. 4333, Opinions of the Attorney General for 1935; Opinions Nos. 1664 and 1679, Opinions of the Attorney General for 1928; and Opinion No. 1776, Opinions of the Attorney General for 1920, are rendered obsolete, to the extent noted, by the 1935 amendment of G.C. 5678, now R.C. 5719.17. Opinion No. 1005, Opinions of the Attorney General for 1957, is overruled to the extent noted.)

To: Napoleon A. Bell, Chairman, Board of Tax Appeals, Dept. of Taxation,
Columbus, Ohio

By: William J. Brown, Attorney General, August 13, 1974

Your request for an opinion concerning the collection of the statutory penalty for failure to pay real property taxes, within the time as extended by the Board of Tax Appeals, reads as follows:

"It has been brought to our attention that certain county treasurers are accepting the payment of real property taxes without penalty after the expiration of the extended time provided by Revised Code Section 323.17 has expired and up to the time of settlement between the county auditor and the county treasurer.

"This position has been taken by these certain treasurers in reliance upon Attorney General's Opinion Number 4333 (1935 page 685).

"It is noted that Revised Code Section 5719.17 provides a 10% penalty for late payment of real property taxes and that Revised Code Section 323.17 provides that the county commissioners may extend the time for the payment of real property taxes (R.C. 323.12) for 30 days and that the Board of Tax Appeals may, upon proper application made and notice given to political subdivisions, further extend the time for payment of real property taxes to a date certain.

"The Board of Tax Appeals is of the view that if Attorney General's Opinion Number 4333 is still applicable to the statutes as presently in effect, then the county auditor and county treasurer are wasting tax money in sending out notices as provided by Revised Code Section 323.17 and the Board of Tax Appeals is wasting tax money in conducting hearings and in granting an extension of time which has no real meaning.

"Therefore, the Board of Tax Appeals, Department of Taxation, State of Ohio, requests your opinion on the following question:

"When the Board of Tax Appeals, pursuant to the provisions of Revised Code Section 323.17, extends the time for the payment of real property taxes to a day certain, is the county treasurer authorized to accept payment of the taxes without the penalty noted in Revised Code Section 5719.17 after the expiration of day certain."

The statutory provisions for the payment of real property taxes may briefly be summarized as follows. The county auditor is required to compile a real property tax list each year on or before the first Monday of August, and, after such corrections as are necessary, the auditor is to certify a duplicate of this list on the first day of October to the county treasurer for collection of the taxes. R.C. 319.28. Immediately upon receipt of the duplicate the treasurer is required to prepare and deliver a bill to each taxpayer. R.C. 323.13.

The time for payment of the real property tax bills is prescribed by R.C. 323.12 which provides in pertinent part:

"Each person charged with real property taxes and assessments * * * on a tax duplicate in the hands of a county treasurer may pay the full amount of such taxes on or before the twentieth day of December, or one-half of such taxes before such date, and the remaining half on or before the twentieth day of June next ensuing.

"* * * * * * * * * *"

A penalty of ten percent is charged against any taxpayer who fails to pay at least one-half of his real property taxes by the twentieth day of December, or who fails to pay the full amount by the twentieth of June. The General Assembly has so provided in R.C. 5719.17 which reads as follows:

"If one half the taxes and assessments charged against an entry of real estate is not paid on or before the twentieth day of December in that year, a penalty of ten per cent shall be added to such half of said taxes and assessments on the duplicate. If the total amount of such taxes, assessments, and penalty is not paid on or before the twentieth day of June, next thereafter, a like penalty shall be charged on the balance of the amount of such unpaid 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."

In recognition, however, of the fact that the county auditor and the county treasurer are sometimes unable to complete the real property tax list and the mailing of the bills within a reasonable

time before the twentieth of December, the General Assembly has, in R.C. 323.17, permitted, first the board of county commissioners, and then the Board of Tax Appeals, to extend the time prescribed by R.C. 323.12 for payment of the taxes. The pertinent language of R.C. 323.17 is as follows:

"The board of county commissioners, by resolution spread upon its journal, may extend the time of payment of taxes for not more than thirty days after the time fixed by sections 323.10, 323.12, and 323.16 of the Revised Code. The board of tax appeals may, by journal entry, further extend the time of payment of taxes in any county, in case of an emergency as defined in this section, to such time as the board fixes in its order, provided, that if a county auditor or treasurer files an application with the board of tax appeals for an extension of time for the payment of taxes beyond a thirty-day period, then the applicant shall give written notice of the extension of time requested, by first class mail, to each fiscal officer of each taxing authority affected by such extension of time and the applicant shall file his certificate that such notice has been given with the board of tax appeals at the same time the application is filed with the board of tax appeals. If any political subdivision, to which notice has been given of the filing of said application, files with the board of tax appeals, within ten days of the receipt of said notice, an objection in writing, the board of tax appeals, may grant the application without hearing or it may set the matter down for hearing and disposition.

"'Emergency,' as used in this section includes death or serious illness, any organized work stoppage, mechanical failure of office equipment or machinery, or any other good and sufficient cause as determined by the board of tax appeals to exist in the office of the county auditor or in the office of the county treasurer which will cause an unavoidable delay in the delivery of duplicates or in the billing or collection of taxes. Such application shall be in affidavit form.

" * * * * * " * * * * * " * * * * * "

The Section also provides for extension of time for payment of the taxes in cases in which the real property is damaged or destroyed by disaster such as fire, flood or tornado.

After the expiration of the times fixed for payment, the auditor and the treasurer are to meet for a settlement of the amount of taxes collected by the treasurer. In R.C. 319.43 (see also R.C. 321.24) the General Assembly provided:

"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 county treasurer and ascertain the amount of real property taxes and assessments and public utility property 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 and assessments as the treasurer has been unable to collect, describing in such list the property on which the delinquent taxes and assessments are charged as described on the duplicate, and note on the list, in a marginal column, the several reasons assigned by the treasurer why such taxes and assessments should not be collected. * * *."

One of my predecessors has correctly said that, while the requirement of a semi-annual settlement is mandatory, the specific dates mentioned in the Section are only directory, and that the settlement is to take place as soon as possible after the expiration of the time fixed for payment of the taxes. Opinion No. 4333, Opinions of the Attorney General for 1935, p. 687.

You ask whether, in the interim between the expiration of the time fixed for payment of the real property taxes and the day of settlement between the auditor and the treasurer, the treasurer may still accept payment of the taxes without the ten percent penalty imposed by R.C. 5719.17, and you point to Opinion No. 4333 in which my predecessor sanctioned such a practice under the language of G.C. 5678, the predecessor of R.C. 5719.17, as it stood in 1935.

At that time the first sentence in G.C. 5678 read as follows --and I emphasize the phrase subsequently eliminated:

"If one-half the taxes and assessments charged against an entry of real estate is not paid on or before the twentieth day of December, in that year, or collected 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. * * *."

At pp. 687-688 of Opinion No. 4333, the then Attorney General took the position that, under the emphasized language,

"* * * the county treasurer had a right to collect such taxes down to the time of his settlement with the county auditor; and that under the terms of this section the penalty could be assessed only in the event of a concurrence of both conditions, that is, that the taxpayer failed to pay his taxes before the expiration of the time limited for the

payment of taxes at such taxpaying period, and the treasurer was unable to collect such taxes before his settlement with the county auditor. * * *."

In so reasoning the Attorney General followed the interpretation that had been given to the language of G.C. 5678 by several of his predecessors. See, e.g., Opinion No. 1776, Opinions of the Attorney General for 1920; Opinion No. 1664, Opinions of the Attorney General for 1928; and Opinion No. 1679, Opinions of the Attorney General for 1928.

In 1943, however, the phrase, "or collected prior to the February settlement", which formed the basis for all the above opinions, was stricken from G.C. 5678. Compare 116 Ohio Laws, 201-202 with 120 Ohio Laws, 237. Since that amendment, the Section, which has now become R.C. 5719.17, has remained substantially unchanged, and the first sentence now reads:

"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, a penalty of ten per cent shall be added to such half of said taxes and assessments on the duplicate. * * * "

In the light of this history, I agree with your conclusion that Opinion No. 4333, and the other opinions on which it relied, have been, to the extent they are inconsistent with the present language of R.C. 5719.17, rendered obsolete. And some of my predecessor's language in Opinion No. 1005, Opinions of the Attorney General for 1957, must be overruled to the extent that he followed the obsolete language of Opinion No. 4333. I conclude, therefore, that, under R.C. 5719.17, if the tax due on real estate is not paid on or before the twentieth of December, or such later date as shall have been set by the board of county commissioners or the Board of Tax Appeals, the ten percent penalty shall be immediately added on the duplicate. The same is true, of course, as to the payment due on the twentieth day of June. Since extensions of time for the payment of taxes under R.C. 323.17 are granted primarily to enable the county auditor and the county treasurer to complete the tax list and the mailing of the tax bills, I assume that the time granted by the board of county commissioners or the Board of Tax Appeals will always be sufficient to give the taxpayers ample time between receipt of the bill and day on which payment is declared to be due. As noted above the various dates set by statute for the various steps in the payment of real estate taxes from the preparation of the tax list in October to the settlement between the auditor and the treasurer in February, are all directory rather than mandatory.

In specific answer to your question it is my opinion, and you are so advised, that, when the Board of Tax Appeals, pursuant to the provisions of R.C. 323.17, extends the time for the payment of real estate property taxes to a day certain, the county treasurer is not authorized to accept payment of the taxes without the penalty noted in R.C. 5719.17 after the expiration of the day certain. (Opinion No. 4333, Opinions of the Attorney General for 1935; Opinions Nos. 1664 and 1679, Opinions of the Attorney General for 1928; and Opinion No. 1776, Opinions of the Attorney General for 1920, are rendered obsolete, to the extent noted, by

the 1935 amendment of G.C. 5678, now R.C. 5719.17. Opinion No. 1005, Opinions of the Attorney General for 1957, is overruled to the extent noted.)