

1257.

APPROVAL, NOTES OF McARTHUR-HUNTSVILLE VILLAGE SCHOOL DISTRICT, LOGAN COUNTY, OHIO—\$8,978.00.

COLUMBUS, OHIO, August 1, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1258.

APPROVAL, NOTES OF PERRY RURAL SCHOOL DISTRICT, LOGAN COUNTY, OHIO—\$6,556.00.

COLUMBUS, OHIO, August 1, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1259.

APPROVAL, NOTES OF WEST LIBERTY VILLAGE SCHOOL DISTRICT, LOGAN COUNTY, OHIO—\$2,513.00.

COLUMBUS, OHIO, August 1, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1260.

TAXPAYER—NOT ENTITLED TO REFUNDER OF PENALTY ON REAL ESTATE TAXES WHEN.

SYLLABUS:

Where a taxpayer fails to pay his real property taxes for the first half of the year 1932 on or before December 20, 1932, or thereafter during the extended time for the payment of such taxes, and thereby incurs the ten per cent penalty prescribed by section 5678, General Code, with respect to such taxes, and thereafter on or prior to June 20, 1933, or afterward prior to the effective date of House Bill No. 663, such taxpayer pays his taxes for the last half of the year 1932 as well as the taxes for the first half of said year and the penalty thereon, he is not entitled to a refunder of the penalty on the taxes for the first half of the year 1932 thus paid by him.

Where a taxpayer fails to pay his taxes for the first half of the year 1932 and thereby incurs the ten per cent penalty with respect to such taxes provided for by

section 5678, General Code, such taxpayer is not, under the provisions of House Bill No. 663, entitled to an abatement of such penalty by paying such taxes after July 20, 1933, although the Tax Commission of Ohio may have extended the time for the payment of taxes after that date.

COLUMBUS, OHIO, August 2, 1933.

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

GENTLEMEN:—This is to acknowledge the receipt of your recent communication which reads as follows:

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

House Bill No. 663, passed by the recent session of the General Assembly, as an emergency, was signed by the Governor on the 18th day of July. It provides that if taxes and assessments charged against an entry of real estate for the first half of 1932, and due December 20, 1932, are paid on or before June 20, 1933 or any subsequent date to which the payment of taxes has been extended by resolution of the county commissioners, all penalties for the non-payment of such real estate taxes and assessments for the first half of 1932, as provided by Sections 5678 and 5679 of the General Code, shall not apply.

QUESTION 1: If a taxpayer pays his December tax together with the penalty thereon at any time prior to the effective date of this Act, July 18th, will such taxpayer be entitled to a refunder of the amount of penalties so paid?

Section 2657 of the General Code, as amended in 114 O. L. 730, provides that the county commissioners may, by resolution, extend the time for the payment of taxes for not more than thirty days after the time fixed by law, which would extend the time from June 20th to July 20th. This section further provides that the Tax Commission of Ohio may further extend the time of payment of taxes for such time as the Commission may fix in its order.

QUESTION 2: In the event that the taxpayer tenders payment of his delinquent December taxes after July 20th and within the time to which the Tax Commission has extended the time for collection, will the county treasurer be required to accept such taxes without penalty, or will he be required to collect the penalty together with the taxes?”

From the facts stated in your communication relating to your first question, I assume that the taxpayer referred to therein did not pay his real property taxes for the first half of the year 1932 on or before December 20, 1932, or thereafter during the extended time for the payment of such taxes and that he thereby incurred the ten per cent penalty prescribed by section 5678, General Code, with respect to such taxes, but that on or prior to June 20, 1933, or some time thereafter prior to the effective date of House Bill No. 663, referred to in your communication, he paid his taxes for the last half of the year 1932 as well as the taxes for the first half of said year and the penalty thereon. Your question upon which my opinion is desired is whether such taxpayer on these facts is entitled to a refunder of the penalty on the taxes for the first half of the 1932 taxes thus paid by him.

Your question is one arising under the provisions of House Bill No. 663, which was passed as an emergency act June 30, 1933, and which went into effect when the same was signed by the Governor on July 18, 1933. House Bill No. 663, as originally introduced March 21, 1933, was a bill to amend sections 5678 and 5679, General Code. This bill having been referred to the Taxation Committee of the House, that body on March 30, 1933, reported out a substitute bill which after some amendments was passed by the House in its present form on June 22, 1933. Thereafter, on June 30, 1933, the bill as received from the House was passed by the Senate without amendment. Section 1 of this act provides as follows:

"If the taxes and assessments charged against an entry of real estate for the first half of 1932, and due December 20th, 1932, are paid on or before June 20, 1933, or any subsequent date to which the payment of taxes has been extended by resolution of the board of county commissioners, all penalties for non-payment of such real estate taxes and assessments, for the first half of 1932, as provided by sections 5678 and 5679 of the General Code shall not apply. Provided, however, upon failure to pay such taxes and assessments on or before June 20, 1933, or any subsequent date to which the payment of taxes has been extended by resolution of the board of county commissioners, the penalties provided by sections 5678 and 5679 shall be of full force and effect."

As above noted, this act became effective July 18, 1933. As a general rule and for most purposes, an act of the legislature speaks only from the time when such act goes into effect as a law. In any event, it is clear that when the taxpayer here in question paid the taxes on his property for the first half of the year 1932 together with a ten per cent penalty thereon, the penalty, as well as the taxes, was a lawful charge against such taxpayer and his property and the county treasurer in the collection of such taxes had no discretion to do otherwise than to collect and receive the penalty with the taxes upon which the penalty was assessed. This act does not provide for the refunder of penalties paid prior to the effective date of the act. Moreover, since the assessment and collection of this penalty was not due to any error, clerical or otherwise, section 2589, General Code, providing for the refunder of taxes erroneously assessed and collected, does not apply. It follows, therefore, that since no statutory provision is made for the refunder of this penalty, and since it further appears that the penalty was voluntarily paid, there is no authority for returning the amount of this penalty to the taxpayer as a refunder or otherwise. *Whitbeck, Treasurer, vs. Minch*, 48 O. S. 210; *State, ex rel., vs. Commissioners*, 119 O. S. 504, 510. I am of the opinion, therefore, that there can be no refunder of the penalty paid by the taxpayer in this case and your first question is answered in the negative.

With respect to your second question, it is noted that under section 2657, General Code, as amended by the 89th General Assembly, 114 O. L. 730, the Tax Commission of Ohio is authorized to extend the time for the payment of taxes after July 20, 1933, which is the expiration date of the time extension granted by the board of county commissioners for this purpose. However, House Bill No. 663, above referred to and quoted, specifically provides as follows:

"Provided, however, upon failure to pay such taxes and assessments on or before June 20, 1933, or any subsequent date to which the pay-

ment of taxes has been extended by resolution of the board of county commissioners, the penalties provided by sections 5678 and 5679 shall be of full force and effect."

From the provisions of this act just quoted, it is clear that the taxpayer is entitled to an abatement of the penalty referred to in the act only when he pays the past due taxes for the first half of the year 1932 prior to the expiration of the time for the payment of the taxes for the last half of said year as extended by the order of the county commissioners, to wit, July 20, 1933; and I am of the opinion that the taxpayer is not entitled to an abatement of such penalty upon payment of taxes after this date, although the time for the payment of such taxes may have been further extended by the Tax Commission of Ohio.

It is obvious that the unfortunate results indicated by the conclusions here reached with respect to the questions submitted by you are due entirely to the fact that House Bill No. 663 was not enacted in time to make the same effectual for the beneficent purpose for which the same was intended. It is plain from the provisions of this act that when the same as a bill was reported out by the House Taxation Committee it was contemplated that this bill should be enacted as an emergency law and become effective prior to the 20th day of June, 1933, and thus afford the taxpayer who had failed to pay his taxes for the first half of the year 1932 an opportunity of paying such taxes without penalty on or prior to June 20, 1933, or thereafter until July 20, 1933, the expiration date of the extension granted by the board of county commissioners. For some reason unknown to me, the passage of this bill in the House was delayed for such length of time that when the same was passed by the Senate and signed by the Governor only two days remained during which the act could operate. Needless to say, this result was and is one to be regretted but from the provisions of this act I am not able to arrive at any conclusions with respect to the operation of this law other than those above indicated.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1261.

APPROVAL, NOTES OF REILY TOWNSHIP RURAL SCHOOL DISTRICT,
BUTLER COUNTY, OHIO—\$3,958.00.

COLUMBUS, OHIO, August 2, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1262.

APPROVAL, NOTES OF SALEM-LIBERTY RURAL SCHOOL DISTRICT,
WASHINGTON COUNTY, OHIO—\$10,497.00.

COLUMBUS, OHIO, August 2, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.