

An examination discloses all of said leases to be executed in proper legal form and I am returning the same herewith with my approval noted thereon as to form.

Respectfully,

GILBERT BETTMAN,
Attorney General.

903.

APPROVAL, BONDS OF MEDINA COUNTY—\$76,253.79.

COLUMBUS, OHIO, September 23, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

904.

APPROVAL, BONDS OF WESTERVILLE VILLAGE SCHOOL DISTRICT,
FRANKLIN COUNTY—\$54,000.00.

COLUMBUS, OHIO, September 23, 1929.

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

905.

TAXPAYER—MAKING COMPLAINT ON PROPERTY VALUATION—
COUNTY TREASURER MAY CHARGE PENALTY ON DIFFERENCE
BETWEEN WHAT WAS TENDERED AND VALUATION AS FINALLY
FIXED BY COURT.

SYLLABUS:

Where, during the pendency of successive proceedings filed by a taxpayer before the county board of revision and the tax commission and in the Common Pleas Court to secure a reduction in the assessed valuation of his property, such taxpayer tenders and pays to the county treasurer taxes on what the taxpayer contends is the correct valuation of such property, and thereafter the Common Pleas Court fixes and determines the valuation of such property at an amount of money in excess of that upon which taxes were tendered and paid, the county treasurer is authorized to collect the unpaid taxes upon such property based upon the difference between the determined valuation of the property and the valuation upon which taxes have been tendered and paid, and he is likewise authorized to collect from said taxpayer the penalty provided by law for the non-payment of taxes at the time required by law upon the difference

between the determined valuation of the property and the valuation upon which taxes were tendered and paid.

COLUMBUS, OHIO, September 23, 1929.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication over the signature of Huber J. Snyder, assistant prosecuting attorney of Stark County, which communication reads as follows:

“I would like to have an opinion on this question. Mr. ‘A’ files a complaint with the auditor upon the appraisal of his property for the year 1926. The Board of Revision sustains the valuation and the complaint is then appealed to the Tax Commission of Ohio and the original valuation is affirmed. Then the complainant takes the case to the Common Pleas Court where the original valuation, as fixed by the county appraisers is found to be wrong and the court puts a new valuation on the property.

Now Mr. ‘A’ has been tendering and the county treasurer has been accepting said tender in the amount of \$300,000. The court fixes the valuation at \$460,000.

The question I would like to know is, has the county treasurer the authority to charge a 10% penalty upon the difference between what was tendered and the valuation as finally fixed by the Common Pleas Court? The difference in figures is of course \$160,000.

Section 5609 of the General Code deals with that subject, but I am not sure of its application.”

From said communication, it appears that the taxpayer therein referred to sought to secure a reduction in the assessed valuation of his property first by a complaint against such valuation filed with the county board of revision, as authorized and provided for by Section 5609, General Code, and thereafter by appeal from the decision of the county board of revision to the Tax Commission as in the manner provided by Section 5610, General Code; that failing in these proceedings, said taxpayer, as authorized by the provisions of Section 5611-2, General Code, filed a petition in error in the Common Pleas Court of the county to secure a reversal, vacation or modification of the determination of the Tax Commission with respect to the taxable valuation of such property, in which proceeding the Common Pleas Court, in the exercise of its jurisdiction, fixed the valuation of such property for purposes of taxation at the sum of \$460,000.00.

For the purpose of the question presented in your communication, it will not be necessary for the moment to discuss the statutory proceedings above referred to further than to note that Section 5611-3, General Code, provides that in case of the institution by a taxpayer of the proceedings provided for by Section 5611-2, General Code, the liability of the taxpayer for taxes upon the property in question in said proceedings, and for non-payment of taxes within the time required by law, shall relate back to the date of the original valuation or determination, and that liability for taxes and for any penalty for non-payment thereof within the time required by law, shall be based upon the valuation as finally determined.

It is quite clear, therefore, that the mere pendency of proceedings to secure a reduction in the assessed valuation of taxable property, whether by complaint filed with the county board of revision, by appeal to the Tax Commission or by petition in error to the Common Pleas Court, does not of itself affect the liability of the taxpayer for the payment of taxes upon the valuation of the property as finally determined, or the liability of such taxpayer for the payment of any penalty imposed

for the non-payment of such taxes within the time required by law. Touching the question here presented, however, it is noted that Section 5609, General Code, which provides for the hearing of such matter by the county board of revision upon complaint filed, provides inter alia as follows:

“The treasurer may accept any amount tendered as taxes upon property concerning which a complaint is then pending, and if such tender is not accepted no penalty shall be assessed because of the non-payment thereof. The acceptance of such tender, however, shall be without prejudice to the claim for taxes upon the balance of the valuation or assessment. A like tender may be made, with like effect, in case of the pendency of any proceeding in court based upon an alleged excessive or illegal valuation.”

Section 5609, General Code, was enacted in its present form subsequent to the enactment of the provisions of Sections 5611-2 and 5611-3, General Code, above referred to, and, as will be noted, the provision therein with respect to tender of taxes upon the valuation of the property fixed by the taxpayer is made applicable during the pendency of proceedings in court to secure a reduction in the assessed valuation of such property. This department, in an opinion directed to the Tax Commission under date of December 31, 1921, Opinions of the Attorney General, 1921, Vol. II, p. 1188, was called upon to consider the effect of a tender of taxes such as that provided for by Section 5609, General Code, while proceedings in error under the provisions of Section 5611-2, General Code, were pending in the Common Pleas Court. In the former opinion of this department here referred to, it was held that if a taxpayer files a petition in error to the determination of the Tax Commission with respect to the valuation of his property under Section 5611-2, General Code, and the proceeding thus filed remains undisposed of until after the time for the payment of the tax upon the property involved in such proceeding has expired, and it appears that the taxpayer made a tender of taxes on a valuation of the property considered by him to be the true valuation of the property, such taxpayer upon the final determination of the Common Pleas Court with respect to the taxable valuation of such property is not liable for any penalty for the non-payment of the tax tendered; but that as to the amount of the tax based upon the difference between the taxable valuation of the property as finally determined by the court and that contended for by the taxpayer and on which the tender was based, the taxpayer is liable for the payment of the penalty provided by law. In the opinion of this department above referred to, it is said:

“The precise question is as to whether the partial payment or tender is to have the effect of preventing the imposition of any penalty, no matter what will be the ultimate determination of the complaint or ‘petition in error.’ Of course, if the final determination of the complaint or ‘petition in error’ is upon a basis which would produce no greater amount of taxes than that paid or tendered, no question can arise; for in that case the final determination will be to the effect that the tax had been properly paid or tendered. But if the complaint or plaintiff fails wholly or partially to secure a reduction of the assessment or valuation to such amount as will bring the tax down to the amount tendered or paid, the question which has been stated exists.

In the opinion of this department, the effect of a payment or tender is to destroy the basis of the penalty with respect only to the amount of taxes thus paid or tendered; so that if the amount of taxes based upon the ultimate determination of the complaint or ‘petition in error’ proves to be greater than that so paid or tendered, the claim for the balance as originally charged

or as modified by the ultimate determination of the complaint or 'petition in error' remains as the predicate of a penalty."

It appears from the facts stated in your communication that during the pendency of the various proceedings filed by the taxpayer therein referred to to secure a reduction in the assessed valuation of his property, he regularly tendered to the county treasurer taxes upon a valuation of \$300,000.00 and that such tender of taxes was from time to time accepted by the county treasurer. In this situation, it would seem clear, that while no penalty can be assessed on the taxes which from time to time were due and payable on said assumed \$300,000.00 valuation, the taxpayer under the provisions of Section 5611-3, General Code, above quoted, is liable for the payment of the penalty provided by law for the non-payment of taxes on that part of the valuation of the property in question as finally determined by the Common Pleas Court which is over and above the valuation upon which taxes were paid and accepted by the county treasurer.

By way of specific answer to your question, I am of the opinion, therefore, that the county treasurer is authorized to collect the unpaid taxes upon the property here in question based upon the difference between said sum of \$460,000.00 and the sum of \$300,000.00, upon which the taxes have been paid, and that he is likewise authorized to collect from said taxpayer the penalty provided by Section 5678, General Code, for the non-payment by such taxpayer of taxes upon the difference between \$460,000.00, the determined value of the property and said sum of \$300,000.00, the valuation upon which taxes were tendered and paid.

Respectfully,

GILBERT BETTMAN,
Attorney General.

906.

BOARD OF EDUCATION—LEASE OF SCHOOL LAND TO TOWNSHIP TRUSTEES FOR GARAGE PURPOSES UNAUTHORIZED.

SYLLABUS:

There is no authority for a board of education to lease school land to township trustees as a site for a garage.

COLUMBUS, OHIO, September 24, 1929.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

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

"You are respectfully requested to submit your opinion on the following questions:

Have township trustees the power and authority under our statutes to construct and maintain a garage upon real estate owned by a centralized school district? This garage will be used for the township truck and township road machinery.

If in your opinion the township trustees would have the right to construct and maintain a garage on centralized school land, and the garage was constructed, then in such an event is it your opinion that the garage becomes