

1876

WHERE THE COUNTY AUDITOR BY A CLERICAL ERROR DESCRIBES CERTAIN LAND IN THE TAX DUPLICATE AS BEING IN ONE SCHOOL DISTRICT WHEN IN FACT IT IS LOCATED IN ANOTHER, HE HAS A DUTY TO CORRECT SUCH ERROR. §§319.35, 5713.19, R.C.

SYLLABUS:

Where the county auditor by a clerical error describes certain land in the tax duplicate as being in one school district when in fact it is located in another, then under the provisions of Sections 319.35 and 5713.19, Revised Code, he has a duty to correct such error when he discovers it, notwithstanding that considerable time may have elapsed from the time the error was committed until it was discovered.

Columbus, Ohio, December 1, 1960

Hon. Everett Fahrenholz, Prosecuting Attorney
Preble County, Eaton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In 1919 the Preble County Board of Education transferred certain territory from the Lewisburg School District to Monroe School District. The resolution of transfer describes the area to be transferred accurately. The County Auditor, evidently in error, transferred more land than described in the transfer resolution to the Monroe School District. The tax lists have carried the larger area than described in the resolution on the Monroe School District duplicate since that date.

"Section 319.35 provides that the County Auditor shall correct clerical errors in tax lists and duplicates, etc.

"The only question apparently, is whether or not lapse of time, since the original transfer error, relieves the County Auditor of his duty under the statute (319.35). The correction would of course place that portion of the area transferred in 1919, not described in the resolution of transfer, back on the Lewisburg School District duplicate.

"The Boards of Education involved requested that I obtain your opinion on the question."

Section 319.35, Revised Code, provides as follows:

"From time to time the county auditor shall correct all clerical errors which he discovers in the tax lists and duplicates in the name of the person charged with taxes or assessments, the description of lands or other property, the valuation or assessment of property or when property exempt from taxation has been charged with tax, or in the amount of such taxes or assessment, and shall correct the valuations or assessments on the tax lists and duplicates agreeably to amended, supplementary, or final assessment certificates. If the correction is made after a duplicate is delivered to the county treasurer, it shall be made on the margin of such list and duplicate without changing any name, description, or figure in the duplicate, as delivered, or in the original tax list, which shall always correspond exactly with each other."

Your attention is also directed to Section 5713.19, Revised Code, reading as follows:

“A county auditor shall correct any clerical errors which he discovers concerning the name of the owner, valuation, description, or quantity of any tract or lot contained in the list of real property in his county.”

There is no limitation in Section 319.35, *supra*, or in Section 5713.19, *supra*, on the time in which the county auditor shall correct clerical errors he discovers in the duplicates in the description of lands. In the absence of a statutory limitation, mere lapse of time (in this case forty-one years which seems like an unusually long time under the circumstances) would not relieve the county auditor of his positive duty under Sections 319.35 and 5713.19, *supra*. Based on the facts as given, there is nothing to indicate that the mistake was other than a clerical error. A “clerical error” has been defined as a mistake which naturally excludes any idea that its insertion was made in the exercise of any judgment or discretion. *School Dist. No. 95 v. Marion County Reorg. Comm.*, 167 Kan. 665, 208 P., 2d, 226 (1949).

Accordingly, it is my opinion and you are advised that where the county auditor by a clerical error describes certain land in the tax duplicate as being in one school district when in fact it is located in another, then under the provisions of Sections 319.35 and 5713.19, Revised Code, he has a duty to correct such error when he discovers it, notwithstanding that considerable time may have elapsed from the time the error was committed until it was discovered.

Respectfully,
MARK McELROY
Attorney General