

4268.

APPROVAL, BONDS OF HOLMES COUNTY, OHIO—\$4,310.00.

COLUMBUS, OHIO, April 22, 1932.

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

4269.

APPROVAL, NOTES OF MINGO JUNCTION CITY SCHOOL DISTRICT,
JEFFERSON COUNTY, OHIO—\$12,500.00.

COLUMBUS, OHIO, April 22, 1932.

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

4270.

APPROVAL, NOTES OF WEST ELKTON VILLAGE SCHOOL DISTRICT,
PREBLE COUNTY, OHIO—\$2,400.00.

COLUMBUS, OHIO, April 22, 1932.

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

4271.

FEES—COUNTY AUDITOR AND TREASURER—HOW FEES ASSESSED
UNDER SECTIONS 2624 AND 2685, G. C., COMPUTED.**SYLLABUS:**

By virtue of the provisions of Sections 2624 and 2685, General Code, the county auditor and county treasurer are each to be credited fees on the amount of each such settlement, that is, one and one-half per cent. of the first \$100,000 of such settlement, regardless of from what duplicate other than liquor, inheritance or cigarette, collected, five-tenths of one per cent. of the next \$2,000,000, four-tenths of the next \$2,000,000, and one-tenth of one per cent. on the remainder of the funds represented in such settlement.

COLUMBUS, OHIO, April 22, 1932.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion, which reads as follows:

- “Should the County Auditors’ fees allowed by Section 2624 G. C., and the County Treasurers’ fees allowed by Section 2685 G. C. for the

collection of taxes, be computed at the percentages allowed, upon the total amount collected during the entire year on all duplicates and advance payments thereon; or upon the total amount collected during the entire year on each duplicate and advance payments thereon; or upon the total amount collected at each of the four settlements on all duplicates or advance payments thereon?"

Your inquiry arises by reason of the amendment of Section 2624, General Code, as it existed prior to the enactment of Amended Senate Bill 323 by the 89th General Assembly, by the insertion of the language which I have italicized:

Sec. 2624. "On all moneys collected by the county treasurer on any tax duplicate of the county, other than the liquor, inheritance and cigarette duplicate, *and on all moneys received as advance payments of personal property and classified property taxes*, the county auditor on settlement with the county treasurer and auditor of state, shall be allowed as compensation for his services the following percentages:

On the first one hundred thousand dollars, one and one-half per cent.; on the next two million dollars, five-tenths of one per cent.; on the next two million dollars, four-tenths of one per cent.; and on all further sums, one-tenth of one per cent. Such compensation shall be apportioned ratably by the county and deducted from the shares or portions of the revenue payable to the state as well as to the county, townships, corporations and school districts." (Italics the writer's.)

And further, by reason of the amendment of Section 2685, General Code, as it then existed, by striking out the word "semi-annually", which I have enclosed in parenthesis, and by the insertion of the language which I have italicized.

Sec. 2685. "On settlement (semi-annually) with the county auditor, the county treasurer shall be allowed as fees on all moneys collected by him on any tax duplicates other than the liquor, inheritance and cigarette duplicates, *and on all moneys received by him as advance payments of personal and classified property taxes*, the following percentages. * ** (Italics the writer's.)

The language of these sections is not specific, in that there is no statement therein as to whether the percentages are to be computed at the rates therein specified on the funds collected by the county treasurer since his next previous settlement with the county auditor, or, whether the fees are to be computed and allowed at the rates specified in the statute on the yearly taxes collected. It must be borne in mind that the taxes collected by the county treasurer are annual taxes, even though the statutes permit them to be paid in semi-annual installments.

You inquire whether the fees are to be computed at the designated percentages on the collections by the county treasurer on each duplicate with the advance payments made thereon separately. In order to give the statute this construction it would be necessary to construe the words "any tax duplicates" as meaning "each tax duplicate." The word "any" has been repeatedly held by the courts to mean "all" or "every". *Bridgel vs. Starbuck*, 34 O. S., 201, *Altman vs. Seiberling*, 31 O. S. 201, *State vs. Hudson*, 24 O. N. P. 160, *State ex rel. Wilson vs. Lewis*, 74 O. S. 403.

While it is undoubtedly a well settled rule of law that when a statute is rendered meaningless by reason of a misprint, or the wrong use of a word, a court, upon discovery of the intent of the legislature by means of other modes of interpretation, may correct the error by interpretation. See *State ex rel vs. Abbey*, 15 O. C. C., N. S. 261. It is an equally well established rule of interpretation that the meaning of a statute must be gathered from the language employed by the legislature. The rule is stated by Marshall, C. J., in *Stanton vs. Realty Company*, 117 O. S. 345, 349:

"It is a general rule of interpretation of statutes that the intention of the legislature must be determined from the language employed and where the meaning is clear, the courts have no right to insert words not used, or to omit words used, in order to arrive at the supposed legislative intent, or where it is possible to carry the provisions of the statute into effect according to its letter."

I am therefore of the opinion that each duplicate should not be considered separately in computing the fees due to the county treasurer and the county auditor.

Your remaining inquiries present a problem of interpretation of statutes which can not be answered from an examination of the language of the statutes themselves. The statutes with reference to the collection of taxes other than liquor, inheritance and cigarette taxes, by the county treasurer, provide that the county treasurer shall receive a general duplicate of real and public utility property (Section 2583, General Code), a general duplicate of personal property (Section 2584, General Code), a classified personal property duplicate (Section 2587-1, General Code), and a delinquent personal property duplicate (Section 5694, General Code). The county treasurer is empowered and directed to keep his office open for the receipt of taxes charged on real estate and public utility property as provided in Section 2649, General Code.

Sec. 2649. "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 2649-1, General Code, provides the time when the office of the county treasurer shall be open for the receipt of taxes charged on the duplicates of general and classified personal property taxes.

Sec. 2649-1. "The office of the county treasurer shall be kept open for the advance payment of general personal property taxes and classified property taxes from the fifteenth day of February until the first day of May and from the tenth day of May until the time of the delivery of the duplicate therefor to the treasurer; and for the collection of taxes charged on such duplicates, from the time of delivery thereof until the twenty-first day of September."

Section 2683, General Code, provides the manner and time of settlement between the county treasurer and the county auditor for the taxes received at such settlements.

Sec. 2683. "On or before the fifteenth day of February, in each year, the county treasurer shall settle with the county auditor for all taxes and assessments that he has collected on the general duplicate of real and public utility property at the time of making the settlement. On or before the tenth day of May, in each year, the county treasurer shall settle with the county auditor for all advance payments of general personal property and classified property taxes that he has received at the time of making the settlement. On or before the tenth day of August in each year, he shall settle with the auditor for all taxes and assessments that he has collected on the general duplicates of real and public utility property at the time of making such settlement, not included in the preceding February settlement. On or before the tenth day of October in each year, he shall settle with the auditor for all taxes that he has collected on the general personal and classified property duplicates, and for all advance payments of general personal and classified property taxes, not included in the preceding May settlement, that he has received at the time of making such settlement. At each such settlement, the auditor shall allow to the treasurer on the moneys received or collected and accounted for by him, his fees, at the rate or percentage allowed by law, at a full settlement of the county treasurer."

The duplicate of delinquent personal property taxes is delivered to the county treasurer on the first day of December (Section 5694, General Code). The treasurer is upon receipt thereof, required forthwith to proceed to collect such taxes. Section 5695, General Code, provides for the distribution of the taxes collected by virtue of such duplicate.

Sec. 5695. "The county treasurer shall forthwith collect the taxes and penalty on the duplicate by any of the means provided by law, and the funds so collected shall be distributed in proper proportions to the appropriate funds."

It might appear that there is no provision for the settlement of taxes on this duplicate, but in Section 2643, General Code, it is provided that at each settlement the treasurer shall make a settlement of all taxes received by him since the last settlement.

Sec. 2643. "At the time of closing the books at the end of each collection of taxes, the county treasurer shall make to the county auditor a statement showing the amount of taxes received in each taxing district in the county since the last settlement under the following heads: Liquor tax, cigarette tax, inheritance tax, dog tax, general tax and classified tax. The treasurer shall keep such accounts in books provided for that purpose as will enable him to make the statements required in this and the preceding sections."

It is therefore apparent that the county treasurer is required at the time of each settlement to make a complete settlement of all taxes received by him since the last settlement between the county auditor and the county treasurer.

In the amendment to Section 2624, General Code, no change is made in the statute except the clause providing that the county auditor shall be allowed fees on advance payments of personal and classified personal property taxes received

by the treasurer. Were this a case of first impression I might be of a different opinion as to the method of application of the fee percentages, but I find that for a considerable period of time the administrative practice has been to allow the auditor at the time of each settlement the fees at the rates specified in the statute upon the funds accounted for at such settlement. A well established rule of interpretation of statutes was applied by the Circuit Court of the Eighth District of Ohio, in construing a similar section of the Code, in the case of *State ex rel. Kaiser vs. Akins, County Auditor*, 18 O. C. C. 349, the second branch of the syllabus of which reads:

“When the practice in a department in interpreting a statute is uniform, and the meaning of the statute, upon examination, is found to be doubtful or obscure, the court will accept the interpretation by the department as the true one.”

This rule is consistently followed by the courts. In *State ex rel., vs. Brown*, 121 O. S. 73, 75, the court said:

“It has been held in this state that ‘administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.’ *Industrial Commission vs. Brown*, 92 Ohio St., 309, 311, 110 N. E. 744, 745 (L. R. A., 1916B, 1277). See also, 36 Cyc. 1140, and 25 Ruling Case Law, 1043, and cases cited.

This is a well-recognized principle of statutory construction, and we deem it applicable in the present instance.”

I am of the opinion that by reason of the ambiguity in the language and the long continued administrative practice in the interpretation of this section, the change of language does not warrant a change of construction.

A similar interpretation as to the method of computation of fees had been placed on Section 2685, General Code, by administrative officers. I am informed that it has existed since the enactment of the original section (R. S. 1117) and having existed for so long a time, the legislature must be presumed to have had knowledge thereof. I am therefore of the opinion that by the deletion of the word “semi-annually”, the legislative intent was merely to make provision for computation of fees at the time of each of the four settlements between the county auditor and the county treasurer which had theretofore been made semi-annually.

Specifically answering your inquiry I am of the opinion that, by virtue of the provisions of Sections 2624 and 2685, General Code, the county auditor and county treasurer are each to be credited fees on the amount of each such settlement, that is, one and one-half per cent. of the first \$100,000 of such settlement, regardless of from what duplicate other than liquor, inheritance or cigarette, collected, five-tenths of one per cent. of the next \$2,000,000, four-tenths of the next \$2,000,000, and one-tenth of one per cent. on the remainder of the funds represented in such settlement.

Respectfully,

GILBERT BETTMAN,
Attorney General.