

2561.

WATER RENTS—COUNTY TREASURER AUTHORIZED TO COLLECT WATER RENTS ASSESSED UPON REAL ESTATE BY BOARD OF TRUSTEES OF PUBLIC AFFAIRS OF VILLAGE WHEN.

*SYLLABUS:*

*The county treasurer has no authority to collect water rents assessed upon real estate by the board of trustees of public affairs of a village, unless said rents have been placed by the county auditor upon the duplicate of real and public utility property, and if such trustees desire to have such rentals collected by the county treasurer at the same time that other taxes and assessments on real estate which appear on the current duplicate are collected, they must certify such rentals to the county auditor prior to the time that such duplicate is delivered to the county treasurer.*

COLUMBUS, OHIO, April 24, 1934.

HON. JAMES M. HOWSARE, *Prosecuting Attorney, Eaton, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication in which you ask whether water rents must be certified to the county auditor before October 1. Your letter reads in part as follows:

“\* \* \* This question arises on different occasions, in view of the fact that the Superintendent of the Water Works of the Village of Eaton, Ohio, certifies delinquent water rents to the County Auditor at any time during the year. In one instance said special assessment was not delivered by the County Auditor to the County Treasurer until after the first of October, 1933, and therefore was not collected by the County Treasurer during the regular tax collection time. The property being sold to satisfy the debts of the estate, the taxes were paid without notice of the special assessment by the administrator of the estate. The assessment has been carried on the Treasurer's books as against the real estate, and the Superintendent of the Water Works insists that the Treasurer should have collected said assessment, regardless of when it came into his hands for collection.”

This opinion will be confined to water rents which have been assessed upon real estate by the trustees of public affairs of a village, as there is no authority for the certification of delinquent water rents to the county auditor by a city. Opinions of the Attorney General for 1912, Volume 1, page 243; Opinions of the Attorney General for 1929, Volume III, page 1788.

Section 4361, General Code, reads in part as follows:

“\* \* \* For the purpose of paying the expenses of conducting and managing such water works, plants and public utilities, of making necessary additions thereto and extensions thereof, and of making necessary repairs thereon, such trustees may assess a water, light, power, gas or utility rent, of sufficient amount, in such manner as they deem most equitable, upon all tenements and premises supplied

with water, light, power, or gas, and, when such rents are not paid, such trustees may certify the same over to the auditor of the county in which such village is located to be placed on the duplicate and collect as other village taxes or may collect the same by actions at law in the name of the village."

I find no statutory provision fixing the time within which such rentals must be certified to the county auditor as there is in the case of special assessments of a municipality in anticipation of the collection of which bonds or notes have been issued. See section 3892, General Code. When delinquent water rents are certified by the trustees of public affairs of a village to the county auditor, they are to be placed on the duplicate by the auditor and collected as other village taxes, as provided by section 4361, General Code.

Section 2583, General Code, which provides for the making up of the general tax list and duplicate of real and public utility property, reads in part as follows:

\*\*\*On or before the first Monday of September in each year, the county auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commission of Ohio, and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the county auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year. \* \* \*"

Since water rentals must be placed on the duplicate, and since this statute provides that the duplicate is to be delivered to the treasurer on October 1, it follows that such rentals should be certified to the county auditor prior to that time if the village desires them to be placed on the duplicate for the current year and collected at the same time as other taxes and assessments which appear on said duplicate are collected. The county treasurer would have no authority to collect water rentals for a village which do not appear upon the duplicate.

Section 5625-25, General Code, provides that the taxing authority of each subdivision shall, by ordinance or resolution, "Authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, or at such later date as may be approved by the tax commission of Ohio." I know of no reason why a different rule should apply to water rentals. Strictly speaking, water rentals are not taxes. *Alter vs. Cincinnati*, 56 O. S. 47; *Cincinnati vs. Roettinger*, 105 O. S. 145. However, the legislature has made them quite similar to taxes. *McDowell vs. Barberton*, 38 Fed. 2d 786. The policy of the law seems to be to have all taxes and assessments upon real estate certified to the county auditor before October 1, so that the duplicate of real and public utility property may if possible be delivered by the county auditor to the county treasurer on October 1. Of course, where such rentals are certified to the auditor after October 1, but before the duplicate is actually delivered to the treasurer, and the auditor actually places them upon such duplicate, it will then be the duty of the treasurer to collect them in the same manner and at the same time as other taxes and assessments which appear on said duplicate are collected.

Water rents which are duly assessed upon real estate become a lien thereon when they become due and unpaid. See Opinions of the Attorney General for 1931, Volume I, page 468. Their certification to the county auditor is not necessary to create the lien. This is simply an additional method provided for their collection. Consequently, when real estate upon which there are liens for water rents is sold at judicial sale prior to the time that such rents are placed upon the duplicate for collection by the county treasurer, and the village is not made a party to such proceeding, such liens would not be discharged but would follow the land into the hands of the purchaser. Opinions of the Attorney General for 1930, Volume II, page 1127.

Specifically answering your question, I am of the opinion that the county treasurer has no authority to collect water rents assessed upon real estate by the board of public affairs of a village, unless said rents have been placed by the county auditor upon the duplicate of real and public utility property, and if such trustees desire to have such rentals collected by the county treasurer at the same time that other taxes and assessments on real estate which appear on the current duplicate are collected, they must certify such rentals to the county auditor prior to the time that such duplicate is delivered to the county treasurer.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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2562.

APPROVAL—CONTRACT BETWEEN STATE OF OHIO AND TRAPP-CARROLL COMPANY OF COLUMBUS FOR THE CONSTRUCTION AND COMPLETION OF GENERAL CONTRACT FOR EXPANSION OF STADIUM DORMITORY FOR MEN (TOWER CLUB) OF OHIO STATE UNIVERSITY AT AN EXPENDITURE OF \$23,690.00.

COLUMBUS, OHIO, April 24, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of Ohio State University, Columbus, Ohio, and the Trapp-Carroll Company of Columbus, Ohio. This contract covers the construction and completion of General Contract for Expansion of Stadium Dormitory for Men (Tower Club) on the campus of Ohio State University, in accordance with the general conditions of the specifications for such project, with the substitutions of Kalman Expanded Steel Joists for Berger Pressed Steel Joists, Gray Portland cement base coat for white cement base coat, and gray marble for slate in all toilet room partitions, as set forth in the form of proposal dated April 4, 1934. Said contract calls for an expenditure of twenty-three thousand, six hundred and ninety dollars (\$23,690.00).

You have submitted the certificate of the Auditor of State showing that there are available moneys from the special trust fund for Dormitory purposes of Ohio State University, which moneys when supplemented by the