

It is therefore the opinion of this department that when municipal bonds are to be sold by financial officers of a municipality, they should be first offered to the trustees of the sinking fund of said municipality, second to the Industrial Commission, and third to the board of commissioners of the sinking fund of the city school district prior to their being offered at public sale. It is also the opinion of this department that the purchase by council as trustees of the cemetery trust fund of the bonds above indicated should be in accordance with the provisions of section 3924 G. C.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1855.

TAXES AND TAXATION—DELINQUENT TAXES—OPINION NO. 1776
 DATED DECEMBER 31, 1920, MODIFIED—WHEN COUNTY TREASURER ENTITLED TO COLLECT PENALTY.

Certain statements in Opinion No. 1776 under date of December 31, 1920, modified, but conclusion adhered to.

COLUMBUS, OHIO, February 11, 1921.

HON. V. W. FILIATRAULT, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—The thanks of this department are due to you for your courteous letter of February 1, quoting a letter from the tax commission of Ohio, which raises a question as to certain features of the holding in Opinion No. 1776 of this department, rendered December 31, 1920.

The commission refers to the case of *Hunter vs. Borck*, 51 O. S. 320, which was overlooked in consideration of Opinion No. 1776. The case holds, among other things, that a county treasurer is not entitled to collect the penalty of five per cent provided for by several of the sections referred to in said Opinion No. 1776 in case he merely receives delinquent taxes over the counter after the last date limited for the payment of taxes. The case draws the general distinction that was pointed out in Opinion No. 1776 between the function known as "receipt of payment of taxes" by the county treasurer and that known as "collection"; but it forces a modification of some of the language in said opinion No. 1776 by holding that some "special effort in person or through agent" must be made by the county treasurer in order to constitute a "collection" which may be used as the predicate of the penalty. The only direct statement on this point in Opinion No. 1776 which needs express modification is embodied in the following sentence:

"in contemplation of law the tax is not being *paid* after the last day limited for the payment of taxes; it is rather being *collected* by the treasurer."

This statement is incorrect.

Another statement in Opinion No. 1776 requires some qualification: that is the statement that

"the treasurer can not of his own motion hold open his books for the payment of taxes beyond January 20 under authority of a resolution of the commissioners extending the time until January 20."

This statement is literally incorrect. It would be more exact to say that the treasurer can of his own motion receive payment of taxes after the last date to which the time for payment has been extended, but that *he cannot be compelled to do so*. In other words, without action by the commissioners in the manner suggested in Opinion No. 1776, the receipt of taxes without penalty by the treasurer after the last date to which the commissioners have extended the time for the payment of taxes would be entirely optional with him; he would be perfectly authorized to close his books and proceed to make some "special effort in person or through agent" to collect the delinquent taxes. Nothing in the case cited is inconsistent with this view and the statutes all bear it out.

While, therefore, it is true that the precise question answered in Opinion No. 1776 might have been answered by the statement that the treasurer was authorized to hold his books open under the circumstances, if he so desired—but not, of course, beyond the settlement period; yet the general conclusions arrived at in the former opinion are adhered to; it being the opinion of this department that without action by the county commissioners the collection process on the part of the county treasurer cannot be stayed beyond the dates named in the statute, but that by action of the county commissioners in the manner therein mentioned this can be done. It would, of course, seem advisable to have the commissioners act in order that there might be a definite date fixed for the payment of taxes.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1856.

APPROVAL, BONDS OF BELLEFONTAINE CITY SCHOOL DISTRICT
IN AMOUNT OF \$34,000.00.

COLUMBUS, OHIO, February 14, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

1857.

TAX ON WHISKEY STORED IN BONDED WAREHOUSES—AMENDED
SENATE BILL NO. 41 UNCONSTITUTIONAL.

Amended Senate Bill No. 41 violates Article XII, section 2 of the Ohio Constitution, which requires that personal property shall be taxed by a uniform rule and according to its true value in money, and also Article II, section 28, which provides that the General Assembly shall have no power to pass retroactive laws.

COLUMBUS, OHIO, February 15, 1921.

HON. HARRY L. DAVIS, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—Your letter of recent date requesting the opinion of this department as to the constitutionality of amended Senate Bill No. 41, recently passed by the General Assembly, providing for the assessment and collection of a