

**OPINION NO. 74-092****Syllabus:**

A county treasurer may not, pursuant to R.C. 319.301 and 321.24, recertify for reimbursement from the state 5 percent of the 1971 real property taxes and 10 percent of the 1972 real property taxes that remain uncollected.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio  
By: William J. Brown, Attorney General, November 5, 1974

I have before me your request for my opinion, which incorporates a letter from the Auditor and Treasurer of Cuyahoga County, which reads as follows:

"We are writing to request that the Cuyahoga County Prosecutor present the following question to the Ohio Attorney General for his opinion.

"In 1971, the Ohio Legislature passed House Bill 475 which provided for a reduction of real property taxes, 5 percent for 1971 taxes and 10 percent for 1972 taxes and thereafter. The 1971 reduction was temporarily enacted in Section 6 of House Bill 475, and the newly enacted Ohio Revised Code 319.301 provided for the reduction for 1972 and thereafter.

"Ohio Revised Code 321.24(F) provides that the State will reimburse the subdivisions for their respective reduction in taxes. It was our contention that the County Treasurer was to certify the total amount of taxes reduced regardless of payment, that is 5 percent for 1971 and 10 percent for 1972 and thereafter, of the amount levied. However, the Board of Tax Appeals and the State Auditor ruled that the reimbursement would not be based on the amount of taxes levied, but on the amount of taxes paid. Consequently, reimbursements from the State for the last half of 1971 and for all of 1972, did not include those parcels on which the taxes were unpaid.

"Subsequently, on July 17, 1973, the legislature clarified this matter by passing Senate Bill 247, which amended Ohio Revised Code 319.301 as follows:

"'After complying with Section 319.30, of the revised code, the County Auditor shall reduce the sums to be levied against each parcel of real property listed on the general tax list and duplicate of real and public utility property for the current tax year by ten percent. The amount of taxes remaining after such reduction shall be the real and public utility property taxes charged and payable on such property and shall be the amounts certified to the County Treasurer for collection. Upon receipt of the tax duplicate, the Treasurer shall certify to the Auditor of the State the total amount by which such taxes were reduced, as shown on the duplicate. . . .'

"Consequently, 1973 taxes and thereafter the reimbursement will be 10 percent of the amount levied with no consideration as to the amounts paid.

"The question, then, is, may the County Treasurer re-certify for reimbursement from the State, 5 percent of the 1971 taxes and 10 percent of the 1972 taxes that are still unpaid?

"It seems that the legislature has confirmed our original contention, and that the County

Treasurers should now be able to clear up the 1971 and 1972 taxes and provide uniformity to the tax accounting procedure."

My Opinion No. 73-008, Opinions of the Attorney General for 1973, held that the rollback provision only applies to taxes actually collected. In that opinion I stated:

"The state's obligation to reimburse the county is limited to an amount which reflects only the taxes actually collected."

This means that a tax that was due but not paid, was not to be actually collected, i.e. delinquent and unpaid taxes are not to be included. The opinion went on to say:

"It should be remembered, however, that when actually collected such delinquent taxes are, in light of my answer to your first and fourth questions, a proper subject for settlement and reimbursement pursuant to R.C. 321.24."

Subsequently, the General Assembly by the enactment of Am. S.B. No. 247, effective July 17, 1973, amended R.C. 319.301 and R.C. 321.24 to provide for state reimbursement based on the amount of the tax reduction certified by the county treasurer in the preceding tax year, regardless of the amount actually collected. The question posed by your request is whether a county treasurer may recertify for reimbursement from the State 5 percent of the 1971 taxes and 10 percent of the 1972 taxes that are still unpaid.

Note that R.C. 321.24(F) provides that, within 30 days after the tax settlement, the county treasurer is to certify to the Auditor of State any adjustments made to his original certification of the amount of tax reduction for that year. The Section continues:

"\* \* \*Upon receipt of such certification, the auditor of state shall draw a voucher and warrant upon the general revenue fund payable to the county treasurer in an amount equal to one-half of the amount certified by the treasurer in the preceding tax year under section 319.301 of the Revised Code. \* \* \*"

Thus, by its plain terms, this statute applies to tax reduction for the current year. The Auditor of State draws a warrant for one-half the amount certified by the county treasurer during the preceding year under R.C. 319.301.

The plain terms of this Section do not provide authority for extending its coverage beyond the current year's tax settlement. Thus, the statute is not expressly made retroactive. Under R.C. 1.48, "[a] statute is presumed to be prospective unless expressly made retrospective." There is simply no authority for the application of Am. S.B. No. 247 to tax settlements of years before 1973. Therefore, your question must be answered in the negative.

In specific answer to your question it is my opinion and you are so advised that a county treasurer may not, pursuant

to R.C. 319.301 and 321.24, recertify for reimbursement from the state 5 percent of the 1971 real property taxes and 10 percent of the 1972 real property taxes that remain uncollected.