

## OPINION NO. 74-100

**Syllabus:**

1. Upon the completion of a transfer of a part of any tract or lot of real estate formerly owned by a public utility, the county auditor must, upon request, apportion the real property tax between the transferor and transferee of such land pursuant to R.C. 319.20.

2. The county auditor may not, pursuant to R.C. 319.20 apportion real property taxes between the transferor and transferee of a part of any tract or lot of real estate before such transfer is completed.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio

By: William J. Brown, Attorney General, November 27, 1974

I have before me your request for my opinion which reads as follows:

"The Cuyahoga County Auditor's Office has followed a firm policy of not issuing split tax bills in sales of Public Utility real property because the provisions of R.C. 5727.06 designate the Tax Commissioner as Chief Assessor of all Public Utility property.

"The standard tax billing procedure in such sales transactions has been to continue straight billing on the public utility and have the parties in interest make their own prorations to accommodate their respective bookkeeping records. The Public Utility notifies the Auditor's Office and the Tax Commissioner of the sale. Thereafter, when straight listing is posted, straight billing is made to each of said parties in interest.

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"The Cuyahoga County Auditor's Office has maintained its firm policy in these current and escrowed sales and the Split Bill Department has been refusing to issue split bills.

"The following questions then arise from the foregoing factual background:

- "1. When a split tax bill is requested because of a completed or pending sale of Public Utility Real Property to a Non-Public Utility purchaser, may the request be denied outright; or, may the request be denied subject to approval of the Tax Commissioner?
- "2. Does the ruling in question No. 1 differ when such sale is to another Public Utility?"

R.C. 5727.06 which authorizes the tax commissioner to assess all property owned by a public utility provides as follows:

"The property owned or operated by a public utility required to make a return to the tax commissioner of its property to be assessed for taxation by the commissioner shall include such utility's plant, all real estate owned by the public utility, and all other property, including that mentioned in section 5709.02 of the Revised Code, owned or operated by it wholly or in part within this state, used in connection with or as incidental to the operation of the public utility, whether the same is held in common or by the individuals operating such public utility. All the real estate and personal property of incorporated companies, including that mentioned in section 5709.02 of the Revised Code, owned and held by such corporation within this state in the exercise of its corporate powers, or as incidental thereto, whether such property is used in connection with such public utility business or not, is conclusively deemed the property of such public utility.

"This section does not apply to personal property held by a public utility as a lessee or bailee from an owner who lists such property for taxation pursuant to Chapter 5725. of the Revised Code."

R.C. 5727.07, which provides for the date of such assessment, reads as follows:

"The property of public utilities to be assessed by the tax commissioner shall be all the property thereof, as defined in section 5727.06 of the Revised Code, owned or operated on the thirty-first day of December, annually, and commencing with the tax year 1960 and each year thereafter, the lien of the state for taxes levied on such property shall attach thereto on the thirty-first day of December next preceding."

Thus, it is clear that the assessment of all property owned by a public utility must be performed by the tax commissioner. In discussing the powers of the county auditor and the tax commissioner with respect to the assessment of property owned by a public utility, the Court, in Toledo Edison Co. v. Galvin, 38 Ohio St. 2d 210, 212 (1974), stated as follows:

" \* \* \* R.C. 5713.01, read in conjunction with R.C. 5727.06 and 5727.07, reserves the exclusive power to value and assess public utility property to the Tax Commissioner. As a matter of administrative practice the commissioner designates the county auditor as his agent to value property owned by a public utility, but, pursuant to R.C. 5727.10, it is the commissioner himself who must finally 'ascertain and assess at its true value in money all the property in this state of each public utility \* \* \*.' Since the assessment of appellant's property was not made by the Tax Commissioner, it was unlawful."

As I understand your questions, they stem from a basic concern that, in apportioning the real property tax between the purchaser and the public utility, a county auditor might take upon himself authority specifically vested in the tax commissioner with respect to the assessment of all property owned by a public utility. A careful examination of the pertinent statutes indicates a clear delimitation of the respective powers of the tax commissioner and the county auditor in this particular situation.

In the event that an entire tract is sold, the law leaves the matter of apportionment of the taxes between the seller and the buyer to a private agreement of the interested parties. When, however, any part of a tract or lot of real estate is sold, an apportionment of the taxes between the transferor and transferee is expressly authorized by law. See, Opinion No. 74-047, Opinions of the Attorney General for 1974. R.C. 5719.01, which provides for the apportionment of real property taxes upon the transfer of land, provides in part as follows:

"The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for the year 1954 and each year thereafter shall attach to all real property subject to such taxes on the first day of January, annually, and continue until such taxes and any penalties, interest, or other charges accruing thereon are paid, but taxes, assessments, penalties, interest, or other charges may be apportioned in

case of transfer of a part of any tract or lot of real estate, in which case the lien of such taxes, special assessments, penalties, interest, or other charges shall extend to the transferred part and the remaining part only to the extent of the amounts allocated to such respective parts. \* \* \*  
(Emphasis added.)

R.C. 319.20, which specifically authorizes the county auditor to perform such an apportionment and sets forth the procedure therefor, provides in part as follows:

"After complying with section 319.202 of the Revised Code and on application and presentation of title, with the affidavits required by law, or the proper order of a court, bearing the last known address of the grantee or of any one of the grantees named in the title, and a reference to the volume and page of the recording of the next preceding recorded instrument by or through which the grantor claims title, the county auditor shall transfer any land or town lot or part thereof, minerals therein, or mineral rights thereto, charged with taxes on the tax list, from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent, or otherwise. If by reason of the conveyance or otherwise, a part only of a tract or lot, minerals therein, or mineral rights thereto, as charged in the tax list, is to be transferred, the auditor shall determine the tax value of the part of a tract or lot of real estate, minerals therein, or mineral rights thereto, so transferred, and the value of the remaining part compared with the value of the whole.

"Whenever a part only of a tract or lot of real estate has been transferred by the auditor and such tract or lot bears unpaid taxes, penalties, or special assessments, the unpaid taxes, penalties, or special assessments shall immediately be apportioned, upon demand or request by the transferee or remaining owner, in the following manner:

"(A) The auditor shall allocate to the part so transferred, and to the remaining part, amounts of any current or delinquent taxes or penalties that have accrued against the parcel as a whole, proportionate to their respective values.

"(B) The lien of taxes, penalties, and special assessments, as levied against the original tract, shall extend to the part so transferred and the part remaining only to the extent of the amounts so allocated to the respective parts.

"This section does not change the total amount of taxes, special assessments, or other charges as originally levied, or the total amount of the balance due. The auditor shall certify such apportionments to the county treasurer."  
(Emphasis added.)

Thus, upon request, the county auditor must prorate the accrued taxes and related items listed in R.C. 319.20 between the purchased portion of the land and that remaining with the seller. The statute makes no distinction between real property owned by a public utility and any other type of owner.

R.C. 5713.01, which authorizes the general assessment of all real property by the county auditor, provides in part as follows:

\* \* \* \* \*

"The county auditor shall be the assessor of all real estate in his county for purposes of taxation, but this section does not affect the power conferred upon the tax commissioner as to the valuation and assessment of the property of any public utility."

Therefore, to the extent that such apportionment involves the assessment and valuation of the parcel of property still held by a public utility, final responsibility for the assessment and valuation lies with the Tax Commissioner. Toledo Edison Co. v. Galvin, supra. Of course, as the court in that case noted, in practice the Commissioner can and does designate the county auditor as his agent to value such property. The county auditor, therefore, in ascertaining the respective taxes on a part of a tract or lot of public utility real property transferred and the part remaining with the seller, is acting as the agent of the tax commissioner to the extent that his apportionment of taxes involves the assessment and valuation of public utility real property.

It is clear, therefore, that upon the completion of a transfer of a part of any tract or lot of real estate formerly owned by a public utility, the county auditor upon request, must apportion the real property tax between the transferor and transferee of such land. R.C. 319.20.

Finally, it should be noted that in no instance is the county auditor authorized to issue a split tax bill while such a sale is merely pending. R.C. 319.20 clearly indicates that the taxes may be apportioned only upon the completion of the transfer of real estate. I must therefore conclude that the county auditor may not, pursuant to R.C. 319.20, apportion real property taxes between the transferor and transferee of a part of any tract or lot of real estate when such a transfer is merely pending.

In specific answer to your questions, it is my opinion and you are so advised that:

1. Upon the completion of a transfer of a part of any tract or lot of real estate formerly owned by a public utility, the county auditor must, upon request, apportion the real property tax between the transferor and transferee of such land pursuant to R.C. 319.20.

2. The county auditor may not, pursuant to R.C. 319.20 apportion real property taxes between the transferor and transferee of a part of any tract or lot of real estate before such transfer is completed.