

2636.

WATER RENT—CITY UNAUTHORIZED TO CERTIFY DELINQUENT
ACCOUNTS TO COUNTY AUDITOR FOR COLLECTION.

SYLLABUS:

There are no statutes in Ohio authorizing either a city to certify its delinquent water rental accounts to the county auditor to be collected in the manner of real estate taxes, or authorizing a county auditor to enter such rental accounts upon the tax list and duplicate of real estate taxes when so certified.

COLUMBUS, OHIO, May 11, 1934.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“In Opinion No. 1203, page 1788 of the 1929 Opinions, your predecessor held as follows:

‘1. There is no authority for the certification of delinquent water rents to the county auditor by a city. Neither is there any authority for the county auditor placing such certification upon the tax duplicate for collection.

2. By reason of the express provisions of section 4361 of the General Code, the board of public affairs of a village may legally certify to the county auditor the delinquent water rents. Upon such certification, the county auditor is required to place the same upon the tax duplicate for collection.’

Mr. L. L. Y., Director of Law of the City of Bedford, requests a review of this opinion in so far as the first branch of the syllabus is concerned.”

While you request merely the review of Opinion No. 1203 (1929 Opinions, Attorney General, 1788) it might be helpful to consider at the same time the Opinion found in 1912 Opinions of the Attorney General, page 243, the syllabus of which reads:

“The director of public service is authorized, by Sections 3956, 3957, 3958, General Code, to adopt such rules and regulations as to security for water rent as he sees fit so long as they do not conflict with statutes, and these powers extend to making the premises a lien for water rents, or to making the landlord responsible for rentals due from a tenant.

When, however, neither such rules and regulations, nor the statutes provide for the same, water rentals due from a tenant are not collectible against the landlord personally nor are they chargeable against the real estate.

Such rentals are in no sense a tax and there is no authority to certify such rents to the auditor for collection.”

The syllabus of the 1929 opinion is set forth in your request. In such opinion it was reasoned that there was a basic proposition that laws levying and collect-

ing taxes are construed strictly in favor of the taxpayer. An unbroken chain of authorities might be cited, not only from the courts of this state but from others as well, in support of the proposition that laws levying a tax are to be strictly construed against the government and in favor of the taxpayer. See *Straub vs. Hilker*, 24 O. App. 90; *Caldwell vs. State*, 115 O. S. 458, 460; *Cassidy vs. Ellerhorst*, 110 O. S. 535; *United States vs. Merriam*, 263 U. S. 179; *Crooks vs. Harrelson*, 282 U. S. 55; *Partington vs. Attorney General*, L. R. 4 H. L. 100, 122; *United States vs. Maryland Casualty Co.*, 49 Fed., 2d, 556. As stated in the first syllabus of *Straub vs. Hilker*, *supra*:

"All taxes are statutory, and method of collection and enforcement, being part of statute, must be followed."

The Attorney General in such opinion then observes that there is no statute existing granting authority to a city to certify water rents to the county auditor to be spread upon the tax list and duplicate of real property taxes and collected as real estate taxes, therefore none exists.

It should be borne in mind that the county treasurer has no power, right or duty to collect any moneys except such powers or rights as are granted by the legislature or such duties so imposed. *Hull vs. Alexander, Treas.*, 69 O. S., 75; *Board of County Commissioners vs. Arnold*, 65 O. S. 479; *Insurance Company vs. Ginder*, 114 O. S. 52. It might likewise be said that the county auditor has no duty, power or authority to place any items upon the tax duplicate other than those for which authority is granted by the legislature.

Authority is specifically granted to a city to collect water rents. (Section 3958 G. C.) No specific authority is granted to the county auditor and county treasurer to make such collections. I am therefore of the opinion that the opinions of my predecessors should be followed.

Specifically answering your inquiry it is my opinion that:

There are no statutes in Ohio authorizing either a city to certify its delinquent water rental accounts to the county auditor to be collected in the manner of real estate taxes, nor is there any language authorizing a county auditor to enter such rental accounts upon the tax list and duplicate of real estate taxes when so certified.

Respectfully,
JOHN W. BRICKER,
Attorney General.

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APPROVAL—BONDS OF CITY OF GIRARD, TRUMBULL COUNTY,
OHIO, \$2,025.00.

COLUMBUS, OHIO, May 11, 1934.

Industrial Commission of Ohio, Columbus, Ohio.