

property touching the question of the location of this property on Summit Street, may properly give rise to some question as to just what property is conveyed to the State by the Davis deed which describes the property therein conveyed with reference to the Thomas property as the same is set out in the deed tendered by the Thomases to the State. In any event, it is desired that such further information should be furnished and be made a part of the abstract as will show the identity of the property which the Thomases are deeding to the State with that conveyed by the Davises to the Weidemans and by the Weidemans to the Thomases.

Other than the exceptions above noted and referred to, this property as of the date of the certification of the last extension to the abstract September 7, 1937, is free and clear of all liens and encumbrances except the taxes on the property for the year 1937. I am herewith returning to you the last extension of the abstract of title submitted to me with respect to the above described property for further information touching the objections referred to and noted in this opinion. I am retaining the original abstract of title, the warranty deed tendered by the Thomases and other files relating to the purchase of this property until such time as the additional information herein requested is furnished to me.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1530.

JOINT OWNERSHIP OF BUILDING BY VILLAGE AND TOWNSHIP—MAY BE TAXED AS PRIVATE ENTERPRISE, WHEN—SECTION 5356 NOTWITHSTANDING—COUNTY AUDITOR MUST DETERMINE REASONABLE VALUE ACCORDING TO THE TAX DUPLICATE VALUATION.

SYLLABUS:

1. *Where a building is owned jointly by a village and a township, and such building is used for both public and private purposes, including the mayor's office, township trustees' offices, village jail, opera house, and, in addition, rooms which are rented for private purposes or business, the value of the portion of the public building so rented for private purposes or business shall, to that extent, be subject to taxation, notwithstanding the limitation contained in Section 5356, General Code. (The*

case of *Scott, Treasurer vs. Village of Athens*, 1. O. N. P., 94, approved and followed.)

2. In determining the valuation which should be placed upon that portion of public buildings which is rented for private purposes or business, the county auditor is authorized to make a reasonable determination of such valuation by such manner and means as he may think best and to enter such valuation on the tax list and duplicate, and apportion the proper amount of taxes chargeable against the same.

COLUMBUS, OHIO, November 24, 1937.

HON. D. H. JACKMAN, *Prosecuting Attorney, London, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date which reads as follows:

"I have received an inquiry from the Madison County Auditor, which requires an interpretation of General Code Section 5356, in regard to property exempt from taxation.

The Village of South Solon and the Township Trustees of Stokes Township have a joint building which is used for public offices. It includes the jail, the township trustees' office, the mayor's office, an opera house, and in addition, two rooms comprising about 9½% of the floor space, which are rented out for restaurant purposes.

This entire building has been on the tax list which obviously is improper, as the provisions of General Code Section 5356 seem to indicate that parts of a public building may be lawfully leased, and still not require the entering of the part of the building so leased, for taxation.

But we observe that the Common Pleas Court in the case of *Scott vs. Adams*, in an Athens County case found in 1 N. P., 94, 1 D., 84, held many years ago that this provision in General Code 5356, was unconstitutional, and that the portions of the building which were rented should be taxed.

Apparently, there are no attorney generals' opinions construing this section, and I would be pleased to have a construction of this section, and if it is found that the rooms which are rented are to be taxed, what method should be used in determining the valuation which should be placed upon this space?"

Section 5356, General Code, as amended February 20, 1920, reads as follows:

“Market houses, public squares, or other public grounds of a city, village or township, houses or halls used exclusively for public purposes or erected by taxation for such purposes, notwithstanding that parts thereof may be lawfully leased, and property belonging to party districts, created pursuant to the provisions of Section 2976-1 et seq. of the General Code, shall be exempt from taxation.”

In the case of *Scott, Treasurer of Athens County, vs. Village of Athens*, I. O. N. P. 94, decided in October, 1894, it was held by the court, as stated in the syllabus:

“Where part of a town hall, erected by taxation, in a village, is rented out for private purposes or business, to that extent it is subject to taxation. The legislature has no power to exempt it from such taxation.”

The law under consideration by the court when the above decision was rendered, was contained in Section 2732, Revised Statutes, as amended May 21, 1894 (91 v. 393). The portion of Section 2732, Revised Statutes then in effect and under consideration by the court, read as follows:

“The following property shall be exempt from taxation:

* * * * *

8. All ** town, or township houses or halls, used exclusively for public purposes, or erected by taxation for public purposes, notwithstanding some parts thereof may be leased under and by virtue of Section 2566 of the Revised Statutes of Ohio **”

Section 2566, Revised Statutes then in effect, authorized the leasing of all or any part of a public hall erected by taxation in a city of the second class, or village, as the case may be, “for private offices, lectures or like purposes for such length of time and upon such terms as shall seem to be proper.” The court, in its opinion in the case of *Scott, Treasurer, vs. Village of Athens, supra*, said:

“The power of taxation is conferred on the legislature in the grant of legislative power by section 1, of article 2, of the constitution, *Adler vs. Whitbeck*, 44 Ohio St. 539, 565; *Baker vs. Cincinnati*, 11 Ohio St. 534, 543.

The limitations upon that power are contained in article 12. *Baker vs. Cincinnati*, 11 Ohio St. 534, 543. *Western Union Telegraph Co. vs. Mayor*, 28 Ohio St. 521.

Section 2 of this article is the only one affecting the present case, which provides that 'Laws shall be passed taxing by a uniform rule * * all real and personal property according to its true value in money, but * * houses used exclusively for public worship, institution for purely public charity, public property used exclusively for any public purpose * * may by general laws be exempted from taxation.

The language of section 2732, until its amendment May 21, 1894, exempted all town halls used exclusively for public purposes, and this was the exercise of all the power of the legislature to exempt, conferred by paragraph 2, article 12, of the constitution, in regard to that class of property; and if the words 'or erected by taxation for public purposes notwithstanding some parts thereof may be leased under and by virtue of section 2566' now contained in section 2732, extends the exemption beyond public property 'used exclusively for any public purpose,' to such an extent it is unconstitutional.

The renting of rooms for a barber shop, or for the office of the justice of the peace, and the other purposes named in the petition, is manifestly not 'using them for public purposes,' unless the fact that the rents arising are to be paid into the municipal treasury make them such.

Laws granting special privileges or exemption from public burdens or duties are to be strictly construed. The constitution contemplates property with regard to exemption as it is in use and not to what is done with its accumulations. Such has been the construction which has been placed upon the language 'used exclusively' in regard to exemptions appearing in legislation in this state. *Cincinnati College vs. State*, 18 Ohio, 110. *Gerke vs. Purcel*, 25 Ohio St. 229; *Humphrey vs. Little Sisters*, 29 Ohio St. 204; *Library Association vs. Pcl-ton*, 36 Ohio St. 258; *Kendricks vs. Farquhar*, 8 Ohio, 189.

The fact, then, that the rents are paid into the treasury of the municipality, does not constitute the renting of the rooms for a public purpose, within the meaning of the constitution creating exemptions of property used exclusively for public purposes, and the attempted exemption was beyond the legislative power, and the act of May 21, 1894, is in that respect unconstitutional. Manifestly, it was not the intention of

those forming the constitution to create exemptions from taxation upon property that was used for business purposes and in competition with the business of individuals engaged in private business. The amended exemption cannot be sustained, either upon authority or upon reason. Whether the legislature had the power to remit past taxes assessed and unpaid, if the provisions in the law in that respect stood alone, it is unnecessary to decide. It is so highly improbable that the legislature would have remitted such taxes except as in furtherance of the general plan to relieve all such property from taxation, that the provision must be held unconstitutional.

It is manifest that the legislature would not have enacted the provision for remission unless it had been in pursuance of the plan to release the property from taxation in the future, and according to well established rule, the provision in regard to remission must be held unconstitutional. *State vs. Pugh*, 43 Ohio St. 99."

The power of taxation at the present time is conferred upon the General Assembly in the grant of legislative power by Section 1, of Article II, of the Constitution of Ohio. The limitations upon this power of taxation are (as when the Athens County case was decided) contained in Section 2 of Article XII, of the Constitution, and these limitations provide as follows:

" * * * Land and improvements thereon shall be taxed by uniform rule according to value. * * *General Laws may be passed to exempt* ** houses used exclusively for public worship, institutions used exclusively for charitable purposes, and *public property used exclusively for any public purpose.* * *." (Italics the writer's.)

Accordingly, there is practically no difference in the wording of the exemption provision in the Constitution as it now exists and as it did exist when the case of *Scott, Treasurer, vs. Village of Athens, supra*, was decided.

Section 5356, General Code, *supra*, provides in part:

" * * Halls used exclusively for public purposes or erected by taxation for such purposes, notwithstanding that parts thereof may be lawfully leased * * shall be exempt from taxation."

The provisions of this section as it now reads, are very little different than the provisions of former Section 2732, Revised Statutes, in effect when the Athens County case was decided.

Another case which seems to be in point, in so far as this opinion is concerned, is that of *The City of Cincinnati vs. Lewis, Auditor*, 66 O. S., 49, in which the court held:

“The ownership of lands by a municipal corporation does not bring them within any statutory exemption from taxation unless they are used in the exercise of a municipal function, and this is true although they are leased by the municipality and the money realized is applied to a public purpose.”

A review of legal authorities indicates that the decision of the court in the case of *Scott, Treasurer, vs. Village of Athens, supra*, has never been reversed or overruled. Accordingly, the same must stand as a proper interpretation of the exemption provision as now contained in Section 5356, *supra*.

Relative to the method which should be used in determining the valuation which should be placed upon that portion of public buildings which is rented for private purposes or business it is my opinion that the county auditor is authorized to make a reasonable determination of such valuation by such manner and means as he may think best, and to enter such valuation on the tax list and duplicate and apportion the proper amount of taxes chargeable against the same.

Section 5328, General Code, provides in part:

“All real property in this state shall be subject to taxation, except only such as may be expressly exempted therefrom * * All property mentioned in this section shall be entered upon the general tax list and duplicate of taxable property as prescribed in this title.”

Accordingly, it is my opinion that where a building is owned jointly by a village and a township, and such building is used for both public and private purposes, including the mayor's office, township trustees' office, village jail, opera house, and, in addition, rooms which are rented for private purposes or business, the value of the portion of the public building so rented for private purposes or business shall, to that extent, be subject to taxation, notwithstanding the limitation contained in Section 5356, General Code. The case of

Scott, Treasurer, vs. Village of Athens, 1 O. N. P., 94, approved and followed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1531.

APPROVAL—BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO, \$25,000.00 (Unlimited).

COLUMBUS, OHIO, November 24, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN :

RE: Bonds of City of Toledo, Lucas County, Ohio,
\$25,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of \$500,000 of Toledo University bonds, being the first series of a \$2,850,000 authorization, dated March 15, 1929, bearing interest at the rate of $4\frac{1}{2}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.