

3050.

INTERURBAN—REAL ESTATE LOCALIZED IN COUNTY OF SITUS
SUBJECT ONLY TO CURRENT AND DELINQUENT TAXES EX-
TENDED AGAINST IT.

SYLLABUS:

Real estate (other than main track, roadbed and power houses) owned by an interurban railroad company and used in operation, which, after the same has been assessed as to valuation by the Tax Commission as a part of the property of the utility as a whole, has thereafter been localized in the county and taxing districts in which the same is situated, is subject only to the lien of current and delinquent taxes extended against such real estate; and such real estate is not subject to the lien of taxes upon the rolling stock, main track, roadbed, power houses, poles, wires and supplies of the company, the valuation of which has been assessed by the Tax Commission of Ohio and has been apportioned to the several counties in and through which such interurban railroad extends, and to the taxing districts therein.

COLUMBUS, OHIO, August 16, 1934.

HON. JACKSON E. BETTS, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you which reads as follows:

“I have been directed by the Treasurer and Auditor of this county to submit a request for your opinion on the following facts:

The Western and Ohio Railway and Power Company formerly operated as a public utility for many years in and through Hancock County. Taxes for the years 1931 and 1932 against said company are delinquent and remain so on the tax duplicate of Hancock County in the various taxing districts through which this utility operated. In the years of 1931 and 1932 it filed its report with the Tax Commission of Ohio as a public utility and valuation was placed on the properties owned by it and allocated to the various counties in which it operated. The company is now in the hands of a receiver; its interurban railway has been abandoned and tracks removed; and the only tangible property left in this county is real estate, consisting of a lot with improvements in the village of Rawson. The improvements consist of a building and a substation with transformer. The sale of real estate is to be made either through foreclosure proceedings by holders of mortgage bonds or by action of the receiver.

In order to know what to include on the tax statement the County Treasurer must know whether all of the delinquent taxes which have accrued against this utility constitute a lien against this real estate and would be preferred against the claims of the bond holders out of the proceeds of the sale of the premises, or just the taxes that have accrued against this particular parcel of real estate.”

The question presented in your communication is whether the real estate,

consisting of a parcel of land with the improvements thereon in the village of Rawson, is subject only to the lien of current and delinquent real property taxes and penalties assessed against such parcel of land, or whether the same is likewise subject to the lien of the whole amount of taxes assessed against the Western and Ohio Railway and Power Company as an interurban railway company under the provisions of sections 5420, et seq., and other related sections of the General Code, and allocated to said county and the local taxing districts in which this real property is located.

You do not state whether or not at the times referred to in your communication the real property here in question was property which was used in the daily operations of the company as a public utility. However, as I view the question, the answer is the same in either event. If this property was not used in the daily operations of the company as an interurban railroad company, it was assessed for taxation by the county auditor under the power and authority granted to him by sections 5548 and 5548-1, General Code. And although this property in such case would in the first instance be included in the assessment made by the Tax Commission of Ohio upon all of the property of the company as a unit and as a going concern, such real property not used in operation would thereafter be deducted from the unit valuation and the same would be subject to state, county and local taxes at the assessed valuation thereof made and entered by the county auditor. In this situation, it is clear that, aside from the question of the assessment of other taxes of the company against this real property under section 5694, General Code, which question is not here presented or considered, the only taxes that would be a lien upon this property would be those levied and assessed against the same.

The same conclusion follows with respect to the question here presented if, as I apprehend is the case, this property was used in the daily operations of the company at the times referred to in your communication. In this connection, it will be noted from the provisions of sections 5429 and 5430, General Code, that the Tax Commission, after determining the valuation of the property of a public utility of this kind as a unit and after deducting therefrom the assessed valuation of real property of the utility not used in its daily operations, is required to separately ascertain the value of all real property of the utility used in its daily operations, other than main track, roadbed and power houses, and to *localize such real property*, together with stationary personal property in the taxing districts in which such property belongs, and to equalize the value of the property thus localized with that of similar property of the utility in other taxing districts. It further appears from these sections that after the Tax Commission had deducted from the unit valuation of the property of this company as a whole, the valuation thus made by the Tax Commission of this and other real property of the company used in daily operations, (other than main track, roadbed and power houses), and had localized such real property, together with stationary personal property of the company in the taxing districts in which such property was located, the Tax Commission was then required to apportion the balance of the property of this company and of the unit valuation thereof among the counties and taxing districts thereof in proportion to the track mileage in such counties and taxing districts, except as to intangible property which was apportioned between the counties on a track mileage basis.

It thus appears that even though the real property here in question was property which was used in the daily operations of the company, the same was localized for taxation in the taxing districts in which the same was situated and would be subject to state, county and local tax levies at the tax valuation assessed

upon the property by the Tax Commission. And inasmuch as this property was thus localized for taxation in the taxing districts in which the same was situated, it would, apart from any question with respect to the certification of any taxes against the property under section 5694, General Code, be subject to the lien of such taxes as were assessed upon this particular property; and the same would not be subject to the lien of other taxes assessed against the company as a public utility and apportioned to the county and the taxing districts thereof.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3051.

BOARD OF EDUCATION—MOTION MAY BE PUT TO VOTE BY ANY MEMBER WHEN PRESIDENT REFUSES—ROLL CALL AND READING OF MINUTES BY SECRETARY WHEN PRESIDENT REFUSES TO CALL FOR SAME.

SYLLABUS:

1. *When the president of a county board of education refuses to put a proper motion to a vote, such motion may be put by the vice-president or any other member of such board.*

2. *When the president of a county board of education refuses to permit a roll call or a reading of the minutes of the preceding meeting, such roll call and reading of the minutes may be obtained by any member of said board making a motion ordering the secretary to call the roll and read the minutes.*

3. *The minutes of a meeting of a county board of education, after being approved by the board and signed by the secretary alone, are an authentic record of the action of said board.*

COLUMBUS, OHIO, August 16, 1934.

HON. LYMAN R. CRITCHFIELD, JR., *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date, requesting my opinion, which reads as follows:

"I have been requested by the Wayne County Board of Education to ask your opinion with reference to several matters of procedure in the conduct of meetings which are as follows:

First: When the President refuses to put a duly seconded motion to a vote, what procedure should be adopted to allow the Board to vote on the motion?

Second: When the President refuses to allow the Secretary to call the roll or read the minutes of the last meeting, how may the Board obtain a roll call and a reading of the minutes?

Third: When the President refuses to sign the minutes after approval by the Board as read, can the signing of the minutes by the President be dispensed with, or if not, what if any steps can be taken by the Board to make sure that their minutes are properly authenticated?