

4611.

PERPETUAL EASEMENT—GRANTED TO STATE—VALUE DEDUCTED
BY COUNTY AUDITOR FROM GRANTOR'S LAND IN ASSESSING
LAND FOR TAXATION.

SYLLABUS:

When a landowner has granted a perpetual easement over land outside of a municipality for public highway purposes the value of such land when used and occupied as a public highway, by virtue of the provisions of Section 5561, General Code, must be deducted from the value of the grantor's land by the county auditor at the time he assesses the remaining property for taxation.

COLUMBUS, OHIO, September 14, 1932.

HON. DAVID D. PORTER, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for opinion as follows:

“The State Highway Department has taken a number of easements for highway purposes from various individual land owners in Medina County; the particular easements I refer to are those taken on forms designated as follows:

R/W Form 1, Title,
Revised 6-1-29 D.

This form seems to grant perpetual easement.

The question arises as to whether or not a County Auditor should deduct the land included in these easements from the land on the tax duplicate so that owners thereof shall not be required to pay taxes thereon. This idea arose from the provisions of Section 8820, G. C., which of course applies to railways.

My personal opinion is that the land owners still being the owner of the fee, in the absence of statutory provision would still be required to pay taxes on the entire amount and that there would be no obligation on the County Auditor to make any deduction.”

Under the provisions of Section 2, Article XII, of the Constitution, all real property must be taxed by uniform rule according to value, except such as may be exempt from taxation by general laws, and is of the character described in such section, to wit:

“burying grounds, public school houses, 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.)

It is self-evident that land over which a perpetual easement has been granted, for highway purposes, does not come within any of these classes unless it be “public property used exclusively for any public purpose.” Section 5351, General Code, enacted pursuant to this constitutional provision, in so far as material, reads:

“ * * public property used exclusively for a public purpose shall be exempt from taxation.”

There is little doubt but that when land is used for a public highway it is used for a public purpose. It is not so clear that where an easement is granted to the state for highway purposes the land becomes “public property”, within the meaning of Section 2, Article XII, of the Constitution. Section 5561, General Code, makes specific provision for the deduction in valuation where land is used as a public highway. Such section reads:

“The county auditor shall deduct from the value of such tracts of land, as provided in the next preceding section, lying outside of municipal corporations, the amount of land occupied and used by a canal or used as a public highway, at the time of such assessment.”

It is hardly probable that the legislative intent was to include highways within the meaning of Section 5351, General Code, for if such intent had existed no reason would have existed for the enactment of Section 5561, General Code, *supra*. It is never to be presumed that the legislature intended to enact a meaningless statute, and Section 5561, General Code, would clearly have been meaningless if land used for public highway purposes had been intended to be included within the meaning of Section 2, Article XII, or Section 5351, of the General Code.

It is thus apparent that the legislature had in mind that when an easement was given to the state, county, etc., for highway purposes, the principal value to such property passed to the public.

It is therefore my opinion that when a landowner has granted a perpetual easement over land outside of a municipality for public highway purposes the value of such land, when used and occupied as a public highway, by virtue of the provisions of Section 5561, General Code, must be deducted from the value of the grantor's land by the county auditor at the time he assesses the remaining property for taxation.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4612.

DELINQUENT TAXES—INTEREST STARTS WHEN PLACED ON DELINQUENT LIST BY COUNTY AUDITOR—WHEN CERTIFIED FOR FORECLOSURE.

SYLLABUS:

1. *In compiling the new or first delinquent list under Section 5704, General Code, the items of taxes and assessments which have not been certified to the Auditor of State as delinquent, as provided under the former law, do not bear interest until they have been placed on “the list and duplicate thereof of all delinquent lands in his county” by the county auditor, even though such taxes have been delinquent since 1927.*
2. *Such items may not be certified for foreclosure under the provisions of*