

10.

COUNTY AUDITOR—REAPPRAISEMENT OF REAL ESTATE—DUTY TO COMPLETE REAPPRAISAL OF PROPERTY IN ORDER TO COMPUTE TAXES FOR CURRENT YEAR.

SYLLABUS:

When the county auditor has made a reappraisal of real estate of each or any political subdivision within the county, it is the duty of the county auditor to proceed with and complete the reappraisal of the property in such subdivision so that the taxes for the current year may be based on the values found by such reappraisal and the values used during the previous year may not be used as a basis of assessment.

COLUMBUS, OHIO, January 17, 1927.

HON. LOUIS H. KREITER, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of your recent communication in which you inquire concerning the basis for the assessment of tax in your county.

You state that you had a new appraisal of the real estate in your county about July, 1925, and that said appraisal is almost completed. Due to this fact, the tax duplicate of 1926 is not completed, and will not be for almost three weeks. You then specifically inquire as follows:

“Will the duplicate which the auditor will certify to the treasurer in about three weeks, using the new appraisal values, be a legal one even though the provision under General Code 2583, 2595, 5592, 5597, 5605, 5609 and 5609-3b have not been strictly complied with; and if not, could the 1925 duplicate be used as a basis for determining the rates on the 1926 duplicate, or what steps should be taken at this time to meet the emergency?”

In reply you are advised that this same question, growing out of the reappraisal of property in Delaware county, Ohio, was before this department in 1924, and in the opinion rendered to the Tax Commission of Ohio, it was held that:

“When the county auditor has made a finding that the property of each or any political subdivision within the county is not on the duplicate at its true value in money, and such finding is confirmed by the county commissioners, it is the duty of the county auditor to proceed with and complete the reappraisal of the property in such subdivisions so that the taxes for the current year may be based on the values found by such reappraisal and the values used during the previous year may not be used as a basis of assessment.”

—Op. Atty. Gen'l, 1924, p. 647.

It was further stated in said opinion that:

“When the auditor has made a finding that the real estate is not on the duplicate at its true value in money in each or any political subdivision, and such finding is confirmed by the board of county commissioners, this action is a final determination, and a duty is thereby imposed upon the auditor in mandatory terms to proceed with a reassessment to find such true value.

It is true that the provisions of Section 5605 fixing the time at which returns shall be made is directory, but there can be no doubt that it was the

legislative intent that such returns be made so as to become the basis of taxation for the current year. This duty is enjoined upon the auditor, and is mandatory."

The conclusion in said opinion reads as follows:

"From these considerations, we believe the conclusion is inescapable that the only duplicate which may be used by the authorities of Delaware county is the duplicate obtained by the appraisal made in the year 1924, and that if this is not now complete, it must be completed by the authorities charged with that duty, even though it is impossible to complete it by the time fixed by statute."

Succeeding the rendering of this opinion, and upon the failure of the auditor of Delaware county to proceed to compute the amount of tax due from the owners of real estate of Delaware county for the year 1925 on the basis of the valuations fixed by the appraisal as made by him during the year 1924, the Tax Commission of Ohio brought an action in mandamus in the Supreme Court against said auditor, reported in 112 Ohio St., at page 721. The Supreme Court found as follows:

"This day came the defendant herein and withdrew the demurrer heretofore filed, and the defendant not desiring to plead further, and having failed to show cause why the alternative writ of mandamus heretofore allowed by the court should not be made peremptory, it is therefore ordered and adjudged that said temporary writ be, and the same hereby is, made peremptory, and that said defendant, Wilbur J. Main, is ordered to proceed forthwith to compute the amount of tax due from the owners of real estate of Delaware county for the year 1925 on the basis of the valuations fixed by the appraisal as made by him during the year 1924, and revised by the board of revision of Delaware county and the tax commission of Ohio."

This decision was rendered January 13, 1925.

It is, therefore, believed that it is the duty of the auditor of Crawford county to compute the amount of tax due from the owners of real estate of Crawford county for the year 1926 on the basis of the valuations fixed by the appraisal as made by him during the year 1925, and as revised by the board of revision of Crawford county and the Tax Commission of Ohio.

Respectfully,
EDWARD C. TURNER,
Attorney General.

11.

GASOLINE TAX RECEIPTS—NO AUTHORITY FOR MUNICIPAL CORPORATION LOCATED ON INTER-COUNTY HIGHWAY OR MAIN MARKET ROAD TO EXPEND ONE-SIXTH PART GASOLINE EXCISE FUND FOR REPAIRS UNLESS STREET OR ROADWAY IS DESIGNATED EXTENSION OR CONTINUANCE OF INTER-COUNTY HIGHWAY OR MAIN MARKET ROAD.

SYLLABUS:

When a municipal corporation is located on an inter-county highway or main market road, there is no authority in law, either express or implied, for a municipal