

3119.

APPROVAL, BONDS OF LAWRENCE TOWNSHIP RURAL SCHOOL DISTRICT,
STARK COUNTY, OHIO—\$43,000.00.

COLUMBUS, OHIO, April 3, 1931.

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

3120.

APPROVAL, BONDS OF SALT ROCK TOWNSHIP, MARION COUNTY, OHIO—
—\$1,000.00.

COLUMBUS, OHIO, April 3, 1931.

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

3121.

APPROVAL, BONDS OF GRAND TOWNSHIP, MARION COUNTY, OHIO—
\$4,100.00.

COLUMBUS, OHIO, April 3, 1931.

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

3122.

ADMINISTRATOR OF AN ESTATE—DESIRING TO PAY TAXES ON PROP-
ERTY OF ESTATE, IN ORDER TO FILE FINAL ACCOUNT AND RECEIVE
DISCHARGE, BEFORE TAX DUPLICATE MADE UP—WHEN PAYMENT
OF SUCH TAXES INTO COUNTY TREASURY BY DRAFT OR PAY-IN
ORDER OF AUDITOR PERMITTED.

SYLLABUS:

Where an executor or administrator of the estate of a deceased person who lists the property of said estate for taxes in the manner provided by Sections 5370 and 5372-1, General Code, desires to pay the taxes on the property so listed in order to file his final account and receive his discharge as such executor or administrator, before the tax duplicate for the current year is made up by the county auditor and transmitted by him to the county treasurer, he may, if the amount of such taxes can be ascertained, pay the same into the county treasury on a draft or pay-in order issued by the county auditor in the manner provided by Sections 2567 and 2645, General Code.

COLUMBUS, OHIO, April 6, 1931.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You have submitted for my opinion a question which is stated in

a communication from the County Auditor of Stark County, Ohio, to you as follows:

“An executor or an administrator is required by law to make a tax return in April, but the amount reported is not placed upon the duplicate or in other words, it is not assessed against the estate until October 1st. If the executor or administrator desires to settle up and close the estate after making the return but before the assessment is made and the tax rate fixed, how should the matter be handled by the county auditor? In such cases should the return be placed upon the duplicate?”

Under the provisions of Sections 5370 and 5372-1, General Code, personal property of the estate of a deceased person is required to be listed for taxation by the executor or administrator of such estate. Such listing is required to be made between the second Monday of April and the first Monday of May annually, and as to the amount and value of such property such listing is to be made as of the day preceding the second Monday of April. Sections 5366-1 and 5372-1, General Code.

It is obvious that the taxes assessed and extended by the county auditor against the personal property of the estate so listed can not be paid by the executor or administrator on the tax duplicate until such tax duplicate is delivered by the county auditor to the county treasurer as required by Section 2595, General Code, which provides that on or before the first day of October of each year, the county auditor shall deliver to the county treasurer a true copy or duplicate of the books containing the tax lists required to be made by him for the year. In this connection Section 2649, General Code, provides: “The office of the county treasurer shall be kept open for the collection of taxes from the time of the delivery of the duplicate to the treasurer until the twenty-fifth day of January and from the first day of April until the twentieth day of July.” By Section 2653, General Code, it is provided that each person charged with taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereof on or before the twentieth day of December, or one-half thereof before such date, and the remaining half thereof on or before the twentieth day of June next ensuing. By Section 2657, General Code, provision is made for extending the time within which the installments of taxes for the year may be paid.

However, the question here presented has reference to a situation where the executor or administrator, in order to file his final account and receive his discharge as such executor or administrator, desires to pay the taxes for the current year on the property of the estate listed by him, before the tax duplicate is delivered by the county auditor to the county treasurer as provided for by Section 2595, General Code. The question thus presented suggests a consideration of Sections 2567 and 2645, General Code, which, so far as pertinent to the question, provide as follows:

Sec. 2567. “Except moneys collected on the tax duplicate, the auditor shall certify all moneys into the county treasury, specifying by whom to be paid and what fund to be credited, charge the treasurer therewith and preserve a duplicate of the certificate in his office.”

Sec. 2645. “Except payments of taxes charged on the duplicate and made before the return by the treasurer of the delinquent list for unpaid taxes, all payments of money into the county treasury shall be on the draft of the county auditor in favor of the county treasurer. The auditor shall preserve a duplicate copy of each draft and the auditor and treasurer shall each keep an accurate record of the number, date and amount thereof and of the fund in favor of which it is drawn.”

The sections of the General Code, above quoted, authorize the payment into the county treasury on the certificate or pay-in order of the county auditor of moneys.

other than taxes paid in on the tax duplicate after the same has been delivered to the county treasurer. Although the practice of receiving and paying into the county treasury, tax moneys otherwise than by the payment of taxes on the duplicate in the hands of the county treasurer is not at all common, and the same has, perhaps, been discouraged by the county officers charged with the duty of assessing and collecting taxes, the provisions of the sections of the General Code, above quoted, are ample authority for the payment on the order of the county auditor of tax moneys in a case such as is here presented, before the tax duplicate is made up and delivered to the county treasurer.

Such tax moneys so paid into the county treasury on a certificate or order of the county auditor should be credited to the "undivided general tax fund"; and if the county auditor makes his semi-annual settlement with the county treasurer in the manner provided for by Section 2602, General Code, he should credit the tax moneys thus paid into the county treasury on his order to the taxing districts or subdivisions entitled thereto.

Obviously, in a case such as that here presented, the provisions of Sections 2567 and 2645, General Code, above quoted, will not meet the situation unless the tax returns for the year have been determined and the county auditor, by his certificate or pay-in order, can specify the amount of money to be paid into the county treasury as taxes for the current year on the property listed by the executor or administrator of the estate.

By way of further answer to the question presented in said communication, it is suggested that when the taxes on property listed by the executor or administrator of such estate are paid into the county treasury on a pay-in order of the county auditor before the tax duplicate is made up and delivered to the county treasurer, such taxes should be entered on the duplicate with a memorandum thereon with respect to the payment of such taxes into the county treasury on a pay-in order of the county auditor, so that the county treasurer will be charged but once with respect to said taxes, to wit: the charge made against him when said taxes are paid into the county treasury on said pay-in order, as is provided for by Section 2567, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3123.

APPROVAL, ARTICLES OF INCORPORATION OF EMPIRE MUTUAL INSURANCE ASSOCIATION.

COLUMBUS, OHIO, April 6, 1931.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I beg to acknowledge your recent communication requesting my re-examination and approval of the proposed Articles of Incorporation of Empire Mutual Insurance Association. I note that the Articles now submitted have been largely revised in accordance with my recent Opinion No. 3095, rendered you March 26, 1931. However, I note that said proposed Articles of Incorporation still contain the objectionable designation of the proposed corporation as one "not for profit". There is no authority for this designation in Title IX, Division III, Subdivision II, Chapter 2-1 ("Chapter