

with the prosecuting attorney, one copy with the county treasurer, and one copy sent to the auditor of state. * *"

Section 5718-3 of the General Code, provides how and when the action shall be commenced and reads in part as follows:

"It shall be the duty of the prosecuting attorney of the county upon the delivery to him by the county auditor of a delinquent land tax certificate, to institute a proceeding thereon in the name of the county treasurer to foreclose the lien of the state, in any court of competent jurisdiction within nine months thereafter unless the taxes, assessments, penalty, interest and charges are sooner paid, and to prosecute the same to final judgment and satisfaction. * *"

It is a uniform rule of statutory construction concerning taxation, that the rights of the taxing authorities to collect taxes must be derived from the statutes. There is now no other provision of law authorizing the subjection of real property to the payment of taxes as distinguished from special assessments through action in foreclosure or sale other than that contained in the section just cited. Since the recent legislature has seen fit to amend Section 2667, of the General Code, by striking out the words "taxes or" and inserting in lieu thereof, the word "special" immediately preceding "assessments" such statute no longer permits a foreclosure for taxes to be brought under such section. It is fundamental that when the legislature amends a statute it is its intention to change the meaning of the statute to the extent of the change of language.

In specific answer to your inquiry it is my opinion that the county prosecutor can not proceed to foreclose the lien of the state created by virtue of the imposition of the Dow-Aiken tax until such tax shall have been certified delinquent, and after the expiration of three years the county auditor shall deliver his certificate by reason of the provisions of Section 5718 of the General Code, to the county prosecutor authorizing such foreclosure.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4107.

SINKING FUND COMMISSIONERS—SCHOOL DISTRICT—AUTHORITY
TO SELL INVESTED SECURITIES LIMITED TO EXTINGUISHING
BONDED INDEBTEDNESS.

SYLLABUS:

The sinking fund commissioners of a school district are without power to sell securities in which the moneys of the sinking fund have previously been invested according to law, for any purpose other than for the purpose of raising funds for the extinguishment of bonded indebtedness or for paying the interest thereon.

COLUMBUS, OHIO, February 27, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“May the Board of Sinking Fund Commissioners of a city school district sell government bonds in which the sinking fund has been invested for the purpose of purchasing county bonds bearing a longer maturity and approximately the same rate of interest?

We may state that it is the proposal of the board to sell U. S. Fourth Liberty, 4¼s, maturing in 1933 at a premium and invest the proceeds in Cuyahoga County Bridge Bonds maturing in 1952. It is further stated that the bonds for which the sinking fund was created mature in 1946 and 1952.”

By force of Section 7615, General Code, the board of commissioners of the sinking fund of a school district is authorized to invest that fund in bonds of the United States, of the State of Ohio, or any municipal corporation, county, township or school district of any state or in bonds of its own issue. Said Section 7615 provides further:

“For the extinguishment of any bonded indebtedness included in such fund, the board of commissioners may sell or use any of the securities or money of such fund.”

Aside from the authority granted to school district sinking fund commissioners to sell securities in which their funds have been invested, by the foregoing statute, no express authority to do so exists.

Such commissioners are within the same category of public officers as members of boards of education, boards of county commissioners and boards of township trustees, so far as their powers are concerned. They are created by statute and their powers fixed by statute.

It is well settled in this state and elsewhere that statutory boards and officers such as those mentioned above, have only such powers as are expressly granted to them, together with such incidental powers as may be said to be included within the express powers granted or necessary to carry out those express powers. A recent case decided by the Supreme Court of Ohio, *Schwing vs. McClure*, 120 O. S., 335, emphasizes this principle by the use of the following language:

“The strictness with which the powers of public officers are to be exercised is evidenced by a great variety of cases, ending in this state with the decision in *State ex rel. A. Bentley & Sons Co., vs. Pierce, Auditor*, 96 Ohio St., 44, 117 N. E., 6, which holds that the contractual power of an officer or board is fixed by the statutory limitations upon his power, and that any doubt as to the power of a public officer, as between himself and the public, must be resolved in favor of the public and against the officer. Public officers have no power except such as expressly given. *Iretton vs. State, ex rel. Hunt*, 12 C. C. (N. S.), 202, 21 C. D., 412, affirmed without opinion, 81 Ohio St., 562, 91 N. E., 1131;

Peter vs. Parkinson, Treas., 83 Ohio St., 36, 93 N. E., 197, Ann. Cas., 1912A, 751."

In another comparatively recent case, *State ex rel. Clarke vs. Cook*, 103 O. S., 465, it is said with reference to administrative boards:

"As administrative boards created by statute their powers are necessarily limited to such powers as are clearly and expressly granted by the statute. This same doctrine as to inferior boards or commissions was recently laid down in *State, ex rel. Locher, Pros. Atty., vs. Menning*, 95 Ohio St., 97."

Upon examination of the statutory powers of the sinking fund commissioners of a school district, it will be noted that each grant of power is specific in terms. No blanket power is extended to the commissioners to act generally on behalf of the sinking fund as would seem in the minds of the commissioners to be good business, as for instance, speculating in securities by buying or selling the same even though such transaction might clearly in the minds of the commissioners be good business practice and might serve to enhance the fund.

Some considerable discretion is extended to the commissioners so far as the class of securities in which their funds may be invested is concerned, but after that discretion is exercised by the purchase of securities their sale is limited to such as is necessary to procure funds for the extinguishment of bonded indebtedness. Undoubtedly this limitation was made advisedly.

In 1928 this office was called upon for an opinion with reference to the power of the sinking fund commissioners of a municipality to sell securities in which moneys of the sinking fund had been invested. The statute extending authority to those sinking fund commissioners in making sales of those securities is practically the same as the statute here under consideration. This opinion will be found in the published Opinions of the Attorney General for 1928, page 1811. The Attorney General, in his opinion, after referring to the provision of Section 4517, General Code, which authorizes the commissioners of the sinking fund of the municipality to sell securities in which the fund had been invested for the purpose of satisfying any obligation under their supervision, states:

"The question, accordingly, occurs whether this is the sole occasion on which investments may be sold or whether, the statutes being silent, there exists implied authority of readjusting investments by sale and reinvestment."

His answer to this question is that such implied authority does not exist. In the course of the opinion he refers to an opinion of a former Attorney General where the same conclusion was reached. See Opinions of the Attorney General for 1921, page 678. The case of *Cleveland vs. Baker*, 4 O. A., 68 is also cited in support of his conclusion.

I am therefore of the opinion, in specific answer to your question, that the sinking fund commissioners of a school district are without power to sell securities in which the moneys of the sinking fund have previously been invested according to law, for any purpose other than for the purpose of raising funds for the extinguishment of bonded indebtedness or for paying the interest thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.