

OPINION NO. 66-039

Syllabus:

Delinquent sewage rental charges are not to be credited with payment prior to current real estate taxes. All taxes charged, due and payable, from whatever origin, against real estate, must be paid by the taxpayer and credited to his account at the same time.

-----

To: Bernard V. Fultz, Meigs County Pros. Atty., Pomeroy, Ohio  
By: William B. Saxbe, Attorney General, February 21, 1966

Your request for my opinion is as follows:

"The Village of Middleport enacted a sewage rate ordinance which contains a provision that in the event the occupants of premises fail to pay the sewage rental, that the clerk of the Board of Public Affairs shall certify the delinquent amounts to the Meigs County Auditor to be placed on the tax duplicate.

"The Meigs County Treasurer has requested your opinion as to whether the payment of real estate taxes by a property owner must be credited first to any delinquent sewage charges before any amount is applied to the payment of current real estate taxes.

"Inasmuch as the tax books open very soon, I will appreciate your early advice on this matter."

The statutory basis for the opinion you request is Section 323.15, Revised Code, which provides in pertinent part as follows:

"No person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate, except when the collection of a particular tax is legally enjoined.

" \* \* \* \* \* "

Section 729.49, Revised Code, gives unqualified authority for a village to certify delinquent sewer rental charges to the county auditor to be extended by him on the county tax duplicate. The second sentence of the section is as follows:

" \* \* \* Such charges shall constitute a lien upon the property served by such connection and if not paid when due shall be collected in the same manner as other municipal corporation taxes. \* \* \* "

Section 323.01 (C), Revised Code, contains the only definition of taxes in Chapter 323, Revised Code, and includes assessments for delinquent sewage rental charges within the term "taxes," as follows:

" \* \* \* \* \*"

"'Taxes' means (1) taxes and assessments levied against real estate and delinquencies; (2) general taxes levied against tangible personal property and all delinquencies.

" \* \* \* \* \*"

Three opinions of the Attorney General have dealt meaningfully with Section 323.15, Revised Code, the counterpart of which, under the General Code, was Section 2655.

Opinion No. 6168, Opinions of the Attorney General for 1936, page 1503, was directed to the disposition of delinquent sewer rental charges. The syllabus of that opinion is as follows:

"1. Under the provisions of Section 3891-1, General Code, sewer rental charges that have become due and are unpaid may be certified by a city to the county auditor for extension on his tax duplicate, and shall then be collected by the county treasurer in the same manner as other county taxes.

"2. A county treasurer may not accept all the taxes charged against a taxpayer's real estate without the payment of the sewer rental charges extended against such real estate on the duplicate of the county auditor."

Opinion No. 4659, Opinions of the Attorney General for 1935, page 1208, dealt with the priority of liens in foreclosure proceedings and assessments for certified delinquent municipal improvements. Syllabus paragraph four, page 1209, provides as follows:

"4. By virtue of section 2655, General Code, county treasurers are not permitted to receive payments of general taxes without at the same time receiving payment of installments of special assessments for public improvements certified to the county treasurer for collection."

The syllabus of Opinion No. 4152, Opinions of the Attorney General for 1932, page 372, is as follows:

"Where special assessments levied by a municipality are certified to the county auditor and placed upon the tax duplicate, the payment of which assessments is objected to by owners of the property assessed on the ground that they claim said assessments are illegal, the county treasurer has no authority to receive from such persons payment of general taxes with-

out at the same time receiving payment of such installments of said assessments as are due, unless the payment of said assessments has been legally enjoined."

The Supreme Court of Ohio considered assessments, taxes, and the duty of county treasurers in State, ex rel. Brown, v. Cooper, 123 Ohio St., 23. The third paragraph of the syllabus of the Court's decision is as follows:

"3. By virtue of Section 2655, General Code, county treasurers are not permitted to receive payments of general taxes without at the same time receiving payment of installments of special assessments for public improvements certified to the county treasurer for collection."

It is my opinion and you are advised that delinquent sewage rental charges are not to be credited with payment prior to current real estate taxes. All taxes charged, due, and payable, from whatever origin, against real estate, must be paid by the taxpayer and credited to his account at the same time.