

2841.

APPROVAL, BONDS OF THE CITY OF CAMPBELL, MAHONING COUNTY
—\$15,000.00.

COLUMBUS, OHIO, November 6, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2842.

TAX AND TAXATION—COUNTY TREASURER—NO AUTHORITY TO
COMPROMISE DELINQUENT TAXES FOR LESS THAN CLAIM WITH
PENALTY.*SYLLABUS:**A county treasurer is without authority to compromise and settle claims for delinquent taxes for less than the amount due with penalty thereon.*

COLUMBUS, OHIO, November 7, 1928.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“In the tax foreclosure cases we often find a property that has taxes upon it in excess of its real value. Coupled with this is the fact that various persons in the chain of title can only be served by publication. This results in difficulty in procuring a certified title by the purchaser at the sheriff’s sale.

In several of these cases we have been asked by holders of quit claim deeds to settle these cases with them for somewhat less than the taxes. We have been in doubt as to the legality of such transaction and have heretofore refused to do this. We would, therefore, like to have your opinion as to the legality of such a proceeding which involves settlement without sale by the sheriff for a reduced sum.”

Section 2595, General Code, 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 list required to be made by him for the year.”

The treasurer’s powers and duties after receiving from the county auditor a real estate tax duplicate are expressly defined by statute. Section 2648, General Code, provides that upon receiving from the county auditor a duplicate of taxes assessed upon property of the county, the county treasurer shall immediately cause notice of the rates of taxation to be published.

Under the Provisions of Section 2650, General Code, the county treasurer is required by law to deliver to every person paying taxes into the treasury a receipt specifying the land, lot and the property on which the tax is assessed, which receipt is required to be prepared in the manner and details prescribed by the statute: *Teale vs. Stillinger*, 95 O. S. 129.

Section 2656, General Code, reads as follows:

“When one-half of the taxes charged against any entry on a tax duplicate in the hands of a county treasurer is not paid on or before the twentieth day of December next after being so charged, or when the remainder of such tax is not paid on or before the twentieth day of June next thereafter, the county treasurer shall proceed to collect it by distress or otherwise together with the penalty of five per cent on the amount of tax so delinquent, which penalty shall be paid into the treasurer’s fee fund.”

Under the provisions of this section if the taxes are not paid within the times limited, it is the mandatory duty of the county treasurer to proceed to collect said tax by distress or otherwise, together with the penalty.

Section 2667, General Code, provides as follows:

“When taxes or assessments, charged against lands or lots or parcels thereof upon the tax duplicate, authorized by law, or any part thereof, are not paid within the time prescribed by law, the county treasurer in addition to other remedies provided by law, may, and when requested by the auditor of state, shall enforce the lien of such taxes and assessments, or either, and any penalty thereon, by civil action in his name as county treasurer, for the sale of such premises, in the court of common pleas of the county, without regard to the amount claimed, in the same way mortgage liens are enforced.”

Section 2670, General Code, reads as follows:

“Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty and costs, for the payment of which the court shall order such premises to be sold without appraisal. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes and assessments, and the balance shall be distributed according to law. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action. When the lands or lots stand charged on the tax duplicate as forfeited to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through and represented by the county treasurer.”

The last two sections provide the court procedure to be followed by the county treasurer.

In *Cooley on Taxation*, 4th Ed., Vol. III, Section 1254, it is stated:

“Generally tax officers, or boards of county commissioners, or the like, have no power to compromise a tax, or to release it wholly or in part, unless specially authorized by statute. So, where an assessment has become final, assessing officers have no authority to agree that if the taxpayer pay the current taxes they would forego collecting the taxes for preceding years. But

a state has power to release or remit particular taxes, at least on compliance with certain conditions, unless the legislature is prohibited from authorizing compromises because of provisions in the state constitution."

Under the provisions of the statutes herein quoted, it is clear that there is no authority granted to the county treasurer to do otherwise than to collect the taxes in full with penalty thereon and no authority is granted to compromise or settle any claim for taxes.

In an opinion of this department found in Opinions of the Attorney General for 1922, Vol. I, page 230, my predecessor was asked whether a county treasurer was authorized to accept from the receiver of an insolvent corporation, the property of which was heavily encumbered by mortgage, an offer to pay the present sums of taxes without the penalty that had accrued on account of the non-payment of tax within the time fixed by law. In answering said question it was stated in the opinion that :

"No specific statutory authority has been found for such procedure. In fact, no county officer is authorized to compromise a claim for general property taxes. *Peters vs. Parkinson*, 83 O. S. 36, decides that the commissioners may not do this after suit brought by the county treasurer to enforce collection, but there is some reasoning in the case which goes beyond the actual decision therein. For example, it is remarked on page 49 that :

'Another, and perhaps sufficient reason why the county commissioners could not rightfully settle or remit the taxes sued for in this case is that such taxes were not wholly due to, nor were they wholly levied for, the use of Holmes county, but there was included therein as well, state, township, municipal, and other taxes.'

Specifically answering your question, it is my opinion that the county treasurer is without authority to compromise and settle claims for delinquent taxes for less than the amount due with penalty thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2843.

AIRPORT—ON LAND OF COUNTY HOME FARM—COUNTY AND CITY
MAY NOT JOIN IN AGREEMENT TO EQUIP AND MAINTAIN.

SYLLABUS:

A county and a city may not legally enter into a joint ownership agreement with respect to that portion of a county home farm, not needed for public use, for the purpose of equipping and maintaining an airport.

COLUMBUS, OHIO, November 7, 1928.

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

GENTLEMEN:—I am in receipt of your recent communication which reads as follows: