of all encumbrances whatsoever, and free and clear of the dower interest of Willhemina Tipton, the wife of said grantor.

An examination of encumbrance estimate No. 123 submitted as a part of the files relating to the purchase of the tract of land here in question, shows that the same has been properly executed and that there are sufficient balances in the proper appropriation account to pay the purchase price of this property, to wit, the sum of $422.50.

It is noted, in this connection, from an inspection of the Controlling Board's certificate submitted, that the purchase money for this tract of land has been released by the Controlling Board pursuant to the authority contained in Section 11 of House Bill No. 510, of the 88th General Assembly.

I am herewith returning, with my approval, said warranty deed, encumbrance estimate No. 123, Controlling Board's certificate and files relating to the purchase of the above described property, other than the abstract of title. This abstract of title is being retained for examination with respect to another tract of land owned of record by said Filliam Tipton, the title to which is likewise covered by said abstract.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1731.

COUNTY COMMISSIONERS—UNAUTHORIZED TO REMIT TAXES CHARGED AGAINST SEPARATELY OWNED COAL LANDS WHEN EXCESSIVE VALUATION CLAIMED.

SYLLABUS:

The board of county commissioners of a county has no authority to release or remit taxes charged upon the tax duplicate of the county against separately owned coal lands or other real property therein upon the ground that said property is assessed for taxation at an excessive valuation.

COLUMBUS, OHIO, April 4, 1930.

HON. D. H. PEOPLES, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication which reads as follows:

> "Attorneys for Trustees in Bankruptcy of the Brocalsa Chemical Company, a defunct corporation of Meigs County, are requesting a release or remittance of taxes from the board of county commissioners of Meigs County, which taxes with penalties have not been paid for several years. Their request is based upon the statement that the assessed valuations are much too high and also that the company was taxed upon 691 acres of coal which acreage was greatly in excess of the actual amount owned by the company which is represented to be about 75 acres.
>
> It is further represented that the excessive coal acreage was entered upon the tax duplicate of the county at the instance of the then manager of the company in order to stimulate the sale of stock in the company; that stock salesmen could and did point to the tax duplicate as showing the value of coal lands; and that it was done to perpetrate a fraud.
>
> Upon examination of the tax duplicates I find that the 691 acres of coal

was first entered on same for taxation in the year 1924. The county auditor who was in office at that time says he has no distinct recollection as to valuation placed upon, but is rather inclined to think that it was entered at the request of the attorney for the Brocalsa Chemical Company at that time.

At all events, the same assessment was made upon the coal property when the general assessment was made in 1925 or 1926—it became effective in 1926—and there has been filed no complaint of the assessment against any of the property in question.

As a matter of fact, I believe the assessment on many of the items of land and buildings is much too high, and it is quite likely the company did not have more than one-seventh of the coal upon which they were taxed. And while I know nothing of the facts relating to the purpose of the entering of the coal upon the duplicate, I am not prepared to dispute the statement of counsel for trustee that it was done in order to perpetrate a fraud upon the buyers of stock.

However, I do question the right of the Board of County Commissioners to grant relief in the matter of these unpaid taxes and penalties for the reason that no complaint has ever been filed with the Board of Revision by the owner or anyone else in his behalf as to the assessment upon any of the property in question.

A. G. R. 1915, p. 2396, seems to cover the case so far as it relates to the assessed value of lands and buildings.

Your opinion is desired as to the duty of the board of county commissioners relative to relief from payment of any unpaid taxes and penalties by the Trustee in Bankruptcy."

I later received a second communication from you with respect to this matter, in which, after referring to that above quoted, you say:

"I have thought it proper to supplement the information contained therein with the following which may be of importance relative to the coal property:

The Brocalsa Chemical Company were the owners of whatever coal there was under 691 acres of surface. Of this acreage 566 acres were acquired by deed from O. L. Bradbury, which was entered for transfer September 13, 1923, and was designated as having not previously been on the duplicate.

In all probability this coal was largely depleted, so far, at least, as practical mining is concerned. However, although this may not be considered important, coal is seldom completely mined out, pillars being left for support of the top in order that the entries may remain intact.

In re-reading my letter of the 10th, I was apprehensive that it might leave the impression that the coal land had been entered upon the tax duplicate without any authority."

Under the provisions of Section 104 of Title 11 of the United States Code, relating to the subject of bankruptcy, trustees in bankruptcy cases are required to pay all taxes legally due and owing by the bankrupt to the United States, state, county, district or municipality in the order of priority set forth therein. The only question here presented is with respect to the power and authority of the county commissioners or other county officers of Meigs County to remit unpaid taxes and penalties assessed against The Brocalsa Chemical Company on account of separately owned coal property owned by said company, which, I assume, have been filed as a claim against funds in the hands of the trustee in bankruptcy of said The Brocalsa Chemical Company. Provision is made by statute for the assessment and listing of minerals for the purpose

of taxation separately from the assessment and listing of the land in which such minerals are found, where such land and minerals are owned by different persons. In this connection, Section 5560 of the General Code provides in part that "where the fee of the soil of a tract, parcel or lot of land, is in any person natural or artificial, and the right to minerals therein in another, it shall be valued and listed agreeably to such ownership in separate entries, specifying the interests listed, and be taxed to the parties owning different interests, respectively."

Section 5563, General Code, provides in such case for an apportionment of the aggregate value of a lot or parcel of land containing minerals between the owner of the fee of the land and the owner of such minerals and rights thereto according to the relative value of the interests so held by such owner of the fee of the land and such minerals or right thereto, respectively.

The provisions of Section 5562, General Code, are in part applicable in the consideration of the question here presented. This section provides, among other things, that if the value of any lot or parcel of land containing or producing coal or the other minerals therein mentioned shall decrease within the year by reason of the exhaustion of any such minerals, or by the failure to find or develop such minerals, and the title to the fee of the soil is in one or more persons and the right of the minerals therein, or any of them, is in another person, the county auditor, if he finds that the value of such minerals or right thereto has decreased to the amount of one hundred dollars or more, by reason of such exhaustion or of such failure to find or develop, may reduce the value of such minerals of rights thereto so as to place such valuation at its true value in money.

It does not clearly appear from your communications whether the separately owned coal property of The Brocalsa Chemical Company owned by it in the lands referred to therein was erroneously assessed for the purpose of taxation in the first instance at a valuation grossly in excess of the true value of such separately owned coal rights and property, or whether the decrease in the value of such separately owned coal rights and property, during the time said company has been delinquent in the payment of its taxes, was caused by depletion of the coal reserves owned by said company in this land. Whatever the fact may be as to this matter, it appears that no effort was made by The Brocalsa Chemical Company to secure at the hands of the county auditor any reduction in the value of the separately owned coal rights and property owned by it in these lands under the authority granted to the county auditor for this purpose by the provisions of Section 5562 of the General Code, above noted. Neither does it appear that said company filed any complaint with the county board of revision as to the valuation of its said property for taxation purposes, as it could have done. *Hammond* vs. *Winder,* 112 O. S., 158. In this situation, and in the consideration of the question here presented, it is to be observed that "the board of county commissioners represent the county in respect to its financial affairs only so far as authority is given by statute". *Jones, Auditor,* vs. *Commissioners of Lucas County,* 57 O. S. 189; *Peter* vs. *Parkinson, Treasurer,* 83 O. S. 36, 49. Obviously the same observation may be made with respect to the limitation on the power of other county officers in this regard. Under the provisions of Section 2588, the county auditor is required to correct from time to time all errors which he discovers in the tax list and duplicate, either in the name of the person charged with taxes or assessments, the description of land or other property, or when property exempt from taxation has been charged with tax "or in the amount of such taxes or assessment." By Section 2588-1, General Code, it is provided that the county auditor from time to time shall correct any clerical errors which he discovers in the tax list in the name of the person charged with taxes, the valuation, description or quantity of any tract, lot or parcel of land or improvement thereon, or minerals or mineral

rights therein, or in the valuation of any personal property, or when property exempt from taxation has been listed therein, and enter such corrections upon the tax list or duplicate.

Section 2589, General Code, provides that if after having delivered the duplicate to the county treasurer for collection the auditor is satisfied that any tax or assessment thereon, or any part thereof, has been erroneously charged, he may give the person so charged a certificate to that effect to be presented to the treasurer, who shall deduct the amount from such tax or assessment. This section further provides for the re-payment, on order of the county commissioners, of taxes and assessments erroneously charged and collected.

Aside from the correction of tax assessments against exempted property, and the remission or re-payment of such taxes provided for by Sections 2588, 2588-1 and 2589, General Code, above noted, it is quite clear that the provisions of these sections of the General Code apply only to errors of a clerical nature in the assessment of taxes and they have no application to the correction of fundamental errors occurring in the assessment of taxes, whether the same arise from an excessive valuation of the property assessed for taxation or otherwise. *State ex rel* vs. *Commissioners,* 31 O. S. 271, 273; *Insurance Company* vs. *Cappellar,* 38 O. S. 560, 574; *Butler* vs. *Commissioners,* 39 O. S., 168; *State* vs. *Raine,* 47 O. S., 447, 456; *Commissioners* vs. *Rosche,* 50 O. S. 103, 112; *Christ* vs. *Commissioners,* 13 N. P. (n. s.) 457.

In this connection it is noted that in an opinion of this office, directed to the Prosecuting Attorney of Gallia County under date of December 16, 1915, (Opinions of the Attorney General for 1915, Vol. 3, p. 2396), which opinion is referred to in your communication first above quoted, it was held:

> "The board of county commissioners and the prosecuting attorney of any county are without authority to remit or release any taxes charged upon the tax duplicate of said county against real estate therein upon the ground and for the reason that said real estate is assessed for taxation at an excessive value."

In the consideration of the question here presented, it is noted that under the provisions of Section 2416, General Code, and within the limitations therein prescribed, the county commissioners of a county have power " to compound or release, in whole or in part, a debt, judgment, fine or emercement due the county."

The Supreme Court of this state had occasion to consider the provisions of this section in the case of *Peter* vs. *Parkinson, supra.* It was there held that inasmuch as a tax is not a debt within the meaning of the term as used in this section of the General Code, the county commissioners of a county are without authority to compromise or to remit or release, in whole or in part, a claim for taxes.

Upon the considerations above noted and discussed, I am of the opinion, in answer to the question presented by you, that the county commissioners and other county officers of Meigs County have no authority to remit or release the taxes here in question, or any part of the same.

No opinion is here intended to be expressed with respect to the authority of the bankruptcy court to determine any question that may be raised with respect to the taxes and penalties assessed against The Brocalsa Chemical Company which have been presented to the trustee for allowance. Neither is there anything in this opinion which intends to anticipate what the finding and determination of such bankruptcy court should be with respect to these matters.

Respectfully,
GILBERT BETTMAN,
Attorney General.