file one such duplicate in the office of the county recorder, which shall operate as a lien on the real estate located in the county. The section concludes:

> "Such duplicate shall be kept by the county recorder and designated as the personal tax lien record, and indexed under the name of the person charged with such tax. No fee shall be charged by the recorder for the services required under this section."

Your question is whether the last sentence of section 5694 prohibits the recorder from charging a fee for recording a release of such tax lien. The language of the statute forbids charging a fee "for the services required under this section." Since section 5694 provides only for the recording of the lien and not for its release or discharge, the recorder's services in the releasing of the lien are not services required under this section. It follows that the provision in question does not apply to releasing the lien. However, unless the statute prescribes a fee for the services in question, the recorder is entitled to none. *Jones, Aud.,* vs. *Commissioners,* 57 O. S. 189.

Section 5696-1 provides that the county treasurer "may issue a certificate of release of the lien provided for in section 5694" in the event of payment, or under certain other circumstances. The section further provides:

> "Such certificate may be filed and recorded with the recorder of the county in which the notice of lien has been filed, for which recording the recorder shall charge and receive a fee of twenty-five cents."

In view of this specific statutory provision, it is my opinion that section 5696-1 of the General Code authorizes the county recorder to charge a fee of twenty-five cents for recording a certificate of release of a tax lien created by section 5694, General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

708.

PENALTY—COUNTY AUDITOR UNAUTHORIZED TO ABATE PENALTY AGAINST REAL PROPERTY UNDER SECTION 5678, G. C.—TAXES PAID TO BANK FOR TRANSMITTAL TO COUNTY TREASURER NOT DELIVERED—EFFECT OF GOVERNMENTAL ORDER LIMITING BANK PAYMENTS—AGENCY DISCUSSED.

SYLLABUS:

The county auditor has no authority to abate a penalty which has been placed against an item of real property pursuant to the provisions of Section 5678, *General Code, even though the taxpayer, during the time within which such tax might have been paid, had deposited with a bank for transmittal to the county treasurer, a sum of money sufficient to pay such tax without penalty but which the bank had not delivered by reason of an order limiting the payment by banks issued by the state or federal government.*

COLUMBUS, OHIO, April 22, 1933.

HON. L. ASHLEY PELTON, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

> "It has been a custom in this county for various banks in this county to receive from their local territory taxes, merely to accommodate their customers. Two of the banks of the county, to wit, the Sharon Center Banking Company, and the Farmers Bank of Spencer, have taken taxes and given merely their own receipt for the same. Since this time these banks have both been closed, and thus far have failed to open for regular business, due to the fact that their funds are 'tied up' in the Cleveland banks.
>
> Thus the question which we are concerned with is: Is it absolutely necessary for our Auditor and County Treasurer to charge the penalty provided by law in these specific cases where the tax payers have paid their money to the banks and gotten the bank's receipt for the same, although it never has reached the County Treasurer's office, due to the 'tie up' of the banks?
>
> I want to make it clear to you that the taking of taxes by the banks was done wholly on their own initiative, and that no official treasurer's receipts were given in any instance. The treasurer also, when advertising in the newspapers the rates for taxation, according to law, put a special notice in, notifying the tax payers that the treasurer would not be responsible for any money deposited with outside parties for payment of taxes until placed in the hands of the treasurer, when his receipt would be given for the same. I am herewith enclosing a copy of the notice that appeared in the newspapers, on which you will note the above notice to the tax payers."

From the facts set forth in your request, it would appear that an answer to your inquiry would depend on whether the banks in question were the agents of the taxpayers or of the county treasurer. If the banks in question, were the agents of the taxpayers for the payment of the tax with moneys entrusted to the banks for the purpose, there can be but little question but that the taxpayer alone, is liable for the act of the bank. It is an elemental, but fundamental rule of agency that "the principal is liable for all the acts of his agent which are within the scope of the authority delegated to him." Likewise, if the bank is the agent or deputy of the county treasurer, the county treasurer alone is liable for the acts of the bank.

There are several methods by which an agency may be created, among which, are:

(1) By express agreement.
(2) By operation of law.
(3) By estoppel.

From your inquiry, there evidently was no express agreement creating an agency between the banks and the county treasurer. You further state that the bank did not give the county's receipts for the money so given or entrusted to it by the taxpayer, but rather, gave its own receipts as evidence of such deposit. It is evident that the banks did not hold themselves out as deputy county treasurers or branches of the treasurer's office, for Section 2650, General Code, requires

that the county treasurer shall give his official receipt for all taxes received and also specifies the nature of such receipt. Section 2746, General Code, authorizes the establishment of branch tax receiving offices under certain circumstances, while if the banks in question were made branches of the treasurer's office pursuant to the provisions of such section, the county treasurer would be responsible for its acts, for such section contemplates that such receiving office shall be in charge of the county treasurer or his deputy. The county treasurer is financially responsible for the acts of his deputies (Section 2637, General Code). If the funds were received by the county treasurer at the bank but were not deposited by him, such funds would not be assets of the bank and would not be affected by an order issued pursuant to Section 710-107a, General Code.

The fact that the county treasurer stated in his advertisement of rates, a copy of which accompanies your request, that the bank was not authorized by the county treasurer to receive payments of taxes negates an intent to create the relation of principal and agent.

I therefore, am of the opinion that the banks in question in the receipt of the moneys for the payment of the taxes were acting solely as the agents of the taxpayers.

Your inquiry further presupposes that the taxes have become delinquent by reason of the fact that the banks were unable to pay over the moneys delivered to the county treasurer by reason of the fact that a sovereign power prevented such payment.

Section 5678, General Code, places a duty upon the county auditor of adding a penalty of ten per cent against an entry of real estate if the taxes of a particular half year are not paid before the semi-annual settlement therefor between the county treasurer and the county auditor.

Under date of July 27, 1932, my predecessor in office, in his opinion No. 4524, held, as stated in the syllabus:

> "1. When a county auditor has legally assessed and placed upon the tax duplicate a penalty against an entry of real estate for the reason that the taxes for the preceding half year were not paid at the time of the semi-annual settlement between the county auditor and the county treasurer, the county auditor has no legal authority to remit such penalty so added.
>
> 2. If, after the county auditor has legally placed a penalty on the tax duplicate, he issues an abatement certificate for such penalty and removes it from the duplicate, such abatement certificate is *void* and the county auditor not only has the power, but it is his duty to re-enter such item so removed, on the duplicate, unless after such item has been so removed the legal title to the item of property against which the penalty is taxed has been conveyed to a holder for value, who relied upon the tax duplicate as it existed at the time of his purchase; the county auditor and his bondsmen are liable for any loss occasioned by reason of such transfer."

In such opinion my predecessor in office discussed the duty of the county auditor with respect to the penalty on real estate taxes. Upon examination of this opinion, I am in accord with the conclusions therein reached.

Specifically answering your inquiries, I am of the opinion that the county auditor has no authority to abate a penalty which has been placed against an

item of real property pursuant to the provisions of Section 5678, General Code, even though the taxpayer, during the time within which such tax might have been paid, had deposited with a bank for transmittal to the county treasurer, a sum of money sufficient to pay such tax without penalty but which the bank had not delivered by reason of an order limiting the payment by banks issued by the state or federal government.

Respectfully,
JOHN W. BRICKER,
Attorney General.

709.

APPROVAL, NOTES OF HAMILTON RURAL SCHOOL DISTRICT, JACKSON COUNTY, OHIO—$1,728.00.

COLUMBUS, OHIO, April 22, 1933.

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

710.

BANKS—UNAUTHORIZED TO ISSUE PREFERRED STOCK—DISCUSSION OF STATUTES RELATING TO ORGANIZATION OF CORPORATION—LIABILITY OF STOCKHOLDERS.

SYLLABUS:

Banks organized under the laws of the State of Ohio are not authorized to issue preferred stock.

COLUMBUS, OHIO, April 22, 1933.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

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

> "Under recent legislation enacted by Congress, the Reconstruction Finance Corporation is authorized to purchase preferred stock issued by banks. I would appreciate it if you would advise me as to whether or not banks organized under the laws of the state of Ohio may issue preferred stock under existing statutes and constitutional provisions. If they may issue such stock, is it subject to double liability?"

This question, in so far as my research discloses, has never been subject to judicial interpretation in Ohio.

Section 710-41, General Code of Ohio, provides as follows:

> "Any number of persons, not less than five, a majority of whom