

enacted as a part of House Bill No. 1, reference is had to the issuance of notes, in no place do I find that such issuance is made mandatory upon the subdivision. I am accordingly of the opinion that the only instance in which the issuance of notes in anticipation of a bond issue is mandatory is where such issuance is required by the provisions of Section 5654-1, *supra*.

Since the only theory on which the issuance of notes is made mandatory by the provisions of this section is that contracts are required to be let before the bonds are issued, the conclusion is obvious that, where an improvement is authorized to be made from the proceeds of a bond issue and no contract in connection with such improvement is required, the issuance of notes is correspondingly not required.

I am accordingly of the opinion that, where county commissioners improve a county road by force account under authority of Section 6948-1, General Code, bonds may be issued for such improvement in anticipation of the receipt of county levies and special assessments upon the estimated cost of such improvement, and without the necessity of issuing notes in anticipation of such bond issue.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2175.

TAX AND TAXATION—AUTHORITY OF COUNTY AUDITOR TO CHANGE  
VALUE OF AN ANNUITY AS LISTED BY TAX PAYER.

*SYLLABUS:*

*The return of the person listing the value of an annuity at what he believes it to be worth is not conclusive on the county auditor, and said county auditor may correct such return and assess said annuity at its true value in money.*

COLUMBUS, OHIO, May 29, 1928.

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

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

“Section 5388, General Code, provides that annuities or money received at stated periods shall be valued at such sum which the person listing them believes them to be worth in money at the time of such listing.

1. Inquiry is made as to whether the return of the person listing the present value of such annuity at what he believes it to be worth is conclusive on the county auditor or whether he has discretion to correct such return as to the value of the annuity.

2. If the answer to this inquiry is that the assessing officer has no such authority your opinion is asked as to whether the provisions of Section 5388 with respect to valuing annuities is not in conflict with Section 2 of Article XII of the Constitution.

Section 5388, General Code, to which you refer, reads as follows:

“In listing personal property, it shall be valued at the usual selling price thereof, at the time of listing, and at the place where it may then be. If

there is no usual selling price known to the person, whose duty it is to fix a value thereon, then at such price as is believed could be obtained therefor, in money, at such time and place. Investments in bonds, stocks, joint-stock companies, or otherwise, shall be valued at the true value thereof, in money. Money, whether in possession or on deposit, shall be entered in the statement at the full value thereof. A credit for a sum certain, payable in money, property of any kind, labor or service, shall be valued at its true value in money, except that if it is for a specific article, or for a specified number or quantity of any article or articles of property, or for a certain amount of labor or services of any kind, it shall be valued at the current price of such property or of such labor or service, at the place where payable. Annuities, or moneys receivable at stated periods, shall be valued at the sum which the person listing them believes them to be worth in money at the time of listing."

This section provides that personal property shall be valued at the usual selling price thereof, at the time of listing and at the place where it may then be, and further that if there is no usual selling price known to the person whose duty it is to fix a value thereon, then at such price as is believed could be obtained therefor, in money at such time and place. It also provides that a credit for a sum certain, payable in money, shall be valued at its true value in money. Said section finally provides that annuities, or moneys receivable at stated periods, shall be valued at the sum which the person listing them believes them to be worth in money at the time of listing.

While the last sentence of said section relates to annuities and provides that said annuities shall be valued according to the belief of the person listing, yet this provision must be considered in connection with the other provisions of said section and also with the provisions of kindred sections, and with the provisions of the Constitution relating to the valuation and taxation of property.

Section 2 of Article XII of the Constitution of Ohio provides as follows:

"Laws shall be passed, taxing by uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise and also all real and personal property according to its true value in money, \* \* \*."

In the case of *McCurdy vs. Prugh*, 59 O. S. 465, it was held that all property not exempt must be taxed, and the valuation placed on it for that purpose shall be its true value in money, and any statute prescribing any other rule or standard would be repugnant to the constitution and therefore void.

In *State vs. Railroad*, 19 O. N. P. (N. S.) 234, it was held that in construing statutes, including those which deal with taxation, effect must be given to the purpose of every part thereof. And in the case of *Wampler vs. Haines*, 19 O. N. P. (N. S.) 360, it was held that all of the statutes with reference to taxation must be construed together, and such construction must be placed upon each as will give effect to the intention of the Legislature.

Under the express provisions of this section of the Constitution laws shall be passed taxing all personal property according to its true value in money.

It was held in the case of *Miller vs. Mellen*, 15 O. N. P. (N. S.) 33, that since Article XII, Section 2 of the Ohio Constitution provides for taxing all real and personal property, the statutes which are enacted by the Legislature with reference to the subject of taxation must be construed on the assumption that every class or species of property within the state is included within the provision of such statute.

In the case of *Bank vs. Hines*, 3 O. S. 1, it was held that the object of this language of the constitution under consideration was comprehensive, not exclusive. The words, "all real and personal property," therefore, in section 2, are to be taken in their most comprehensive legal import, including every kind of real and personal property whatsoever, not excepting the several classes of personal property expressly mentioned in the first clause of the section.

In the case of *Insurance Company vs. Bowland*, 196 U. S. 611, it was held that the purpose of the Ohio Constitution and statutes passed in pursuance thereof, as frequently declared by the Supreme Court of Ohio, is to tax by uniform rule all property owned or held within the state; and a narrow construction of a statute which will defeat this purpose will not be adopted where any other is possible.

Section 5367, General Code, reads in part as follows:

"Each county is hereby made the unit for the listing and assessing of personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise for taxation purposes. The county auditor, in addition to his other duties, shall be the assessor for and shall list and value for taxation all such property within his county, provided that nothing herein shall affect the power conferred upon the tax commission of Ohio in the matter of the valuation and assessment of the property of any public utility."

This section provides that the county auditor shall be the assessor for and shall list and value for taxation all personal property within his county.

Section 5368, General Code, provides as follows:

"The county auditor shall examine all returns made to him and if he finds after investigation that any property is omitted from such returns or that the value given is incorrect, shall, after giving notice to the person making oath thereto, make such corrections or additions as he deems necessary and list and assess such property at its true value in money. The auditor shall have authority to examine any and all persons under oath, compel the attendance of witnesses and the production of papers and documents. He shall list and value all personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, not returned to him."

This section expressly provides that the county auditor if he finds that the value of personal property as listed is incorrect, shall, after giving notice to the person making oath thereto make such corrections and additions as he deems necessary and list and assess such property at its true value in money.

While it is true that Section 5388, General Code, provides that in listing personal property annuities shall be valued at the sum which the person listing them believes them to be worth in money at the time of listing, yet this is the rule provided for listing personal property generally and does not prohibit the county auditor from acting under the Constitution of Ohio and the various sections of the General Code which provide that personal property shall be valued at its true value in money.

Section 5388, General Code, is not in conflict with Section 2 of Article XII of the Constitution as it does not prohibit listing and valuing annuities at their true value in money.

It is therefore my opinion that the return of the person listing the value of an annuity at what he believes it to be worth is not conclusive on the county auditor, and said county auditor may correct such return and assess said annuity at its true value in money.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*