

virtue of article II, section 1 of the Constitution of Ohio. In addition to that conclusion, I am inclined to believe that the provisions of section 1438-1, quoted herein, can not be interpreted as granting to the Conservation Council the authority to make such a rule and regulation, since the provisions of that section only empower that body to make rules and regulations which it may deem necessary to the functioning of the Conservation Council and the administration of the conservation laws.

It is quite evident that the creation of fish hatcheries by the federal government in this state is not a necessary incident to the administration and enforcement of the conservation laws of Ohio. This conclusion finds further support by the very fact that the legislature of this state deemed it necessary and advisable to enact section 1447, which permits the director of agriculture to establish and maintain fish hatcheries in Ohio. If the Conservation Council had authority, by reason of its rule making power, to permit the erection and maintenance of fish hatcheries in this state, it would not have been necessary for the legislature to have enacted section 1447.

It is therefore my opinion that:

1. There is no statutory provision in Ohio which accords to the United States Commissioner of Fisheries the right to establish and maintain fish hatcheries in this state as is required by an act of Congress appropriating money for such purpose.

2. The Conservation Council can not promulgate a rule and regulation which will accord to the United States Commissioner of Fisheries the right to establish and maintain fish hatcheries in this state as is required by an act of Congress appropriating money for such purpose.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4019.

DELINQUENT LAND TAXES—RIGHT TO PAY IN INSTALLMENTS—
LIMITED TO THOSE BECOMING DELINQUENT AT AUGUST,
1930, SETTLEMENT, AND THEREAFTER.

SYLLABUS:

Taxes and assessments on real property which became delinquent prior to 1930 and which are delinquent at this time, may not be paid in installments in the manner provided by section 2672, General Code, as amended, 114 O. L. 827; but the right to make installment payments of delinquent taxes and assessments is limited to the payment of such taxes and assessments as first became delinquent at the August 1930, settlement, and thereafter.

COLUMBUS, OHIO, February 2, 1932.

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

GENTLEMEN:—This is to acknowledge the receipt of your recent communication which reads as follows:

“You are respectfully requested to furnish this department your written opinion on the following:

Section 2672 of the General Code as amended in S. B. 326, provides

that delinquent taxes, assessments and penalties charged on the tax duplicate against any entry of real estate, may be paid in installments at and during five consecutive semi-annual tax-paying periods, whether such real estate has been certified as delinquent or not. Section III of this Act provides as follows:

'The provisions of Sections 2672, 2673 and 2673-1 of the General Code, hereby amended and enacted shall apply to the payment of any taxes and assessments becoming due at and after the August settlement in the year 1930 and penalties thereon.'

Question. May taxes and assessments which became delinquent prior to 1930 and are still delinquent at this time, be paid in installments, or are installment payments limited to taxes and assessments which became delinquent for the first time at and after the August settlement, 1930?"

In the consideration of the question presented in your communication, it is noted that section 5671, General Code, as amended by Amended Senate Bill No. 326, enacted by the 89th General Assembly, 114 O. L. 828, as before its amendment, provides that the lien of the state for taxes levied for all purposes, in each year, shall attach to all real property subject to such taxes on the day preceding the second Monday of April and continue until such taxes, with any penalties accruing thereon, are paid. Delinquent taxes on real property, which are defined as taxes which have not been paid for two consecutive semi-annual tax paying periods (secs. 5678, 5705, General Code), are likewise a lien against the property assessed. In this connection it is observed that section 5613, General Code, provides that the state shall have a first and best lien on lands and lots on the delinquent land list, for the amount of taxes, assessments and penalty and accrued interest charged prior to the delivery of such list; although as to this, it is to be noted that interest on delinquent taxes and assessments does not accrue until after the lapse of one year from the time when the same are due and payable (sec. 5679, General Code).

Section 5723, General Code, 114 O. L. 838, makes provision for the payment and receipt of delinquent taxes and assessments as follows:

"It shall be the duty of the county treasurer, upon receipt by him of all moneys due him for delinquent taxes, assessments, penalty and interest on any tract of land, city or town lot, to enter upon the tax duplicate and upon his copy of the delinquent land list the word 'redeemed,' and it shall be the duty of the county auditor, after each settlement period, to revise the * * * list of * * * delinquent lands, city or town lots, by writing the word 'redeemed' (in the margin provided for that purpose) on all such tracts of land, city or town lots entered 'redeemed' upon the treasurer's duplicate, and he shall make a like entry on his tax list."

However, aside from section 2672, General Code, as amended in Amended Senate Bill No. 326, referred to in your communication, no provision is made for the payment of delinquent taxes and assessments by installments. The privilege granted to the taxpayer by section 2653, General Code, of paying one-half of such taxes at the December tax collection period, and the other half at the following June tax collection period, is applicable only to taxes for the current year.

Section 2672, General Code, 114 O. L. 827, above referred to, provides as follows:

"Delinquent taxes, assessments and penalties charged on the tax duplicate against any entry of real estate may be paid in installments at and during five consecutive semi-annual tax paying periods, whether such real estate has been certified as delinquent or not. Such installment payments may be made at the times provided by law for the payment of current taxes and shall be received with the full amount of current taxes then payable and not otherwise. Each installment payment shall be applied to the items of taxes, assessments and penalties so charged in the order in which such items became due. Each installment shall be not less than one-fifth of the total principal amount of the taxes, assessments and penalties so charged, unless the collection of a particular tax has been legally enjoined, together with the full amount of interest, if any, accrued on the unpaid portion of the principal at the time of the payment of such installments, unless, at any payment period, less than one-fifth of such total principal amount remains unpaid, in which event the entire balance, together with interest shall be paid; the last of such installments shall also include the costs of certification of such land as delinquent, as prescribed by section 5713 of the General Code."

The above quoted section of the General Code confers upon the taxpayer the privilege of paying delinquent taxes and assessments and penalties thereon in five installments at and during as many consecutive semi-annual tax-paying periods; and this section prescribes no limitation upon such right with respect to the time when such taxes and assessments became delinquent, or otherwise.

However, as is noted in your communication, section 3 of said Amended Senate Bill No. 326 provides, among other things, that:

"The provisions of sections 2672, 2673 and 2673-1 of the General Code hereby amended and enacted, shall apply to the payment of any taxes and assessments becoming delinquent at and after the August settlement in the year 1930 and penalties thereon."

In this connection certain language found in section 5713, General Code, as amended in Amended Senate Bill No. 326, should be noted. This section, which is a part of the chapter of the General Code relating to delinquent lands, provides, among other things, that "if the taxes have not been paid for three consecutive years after certification, the state shall have the right to institute foreclosure proceedings thereon, in the manner provided by this chapter". This section further provides as follows:

"Nothing in this chapter shall be so construed as to forbid or prevent the partial payment of such delinquent taxes, assessments and penalty, during said period of three years, but such partial payments may be made and received as provided by law without prejudice to the right of the state to institute foreclosure proceedings at the end of said period for any amount then remaining unpaid."

The above quoted provisions of section 5713, General Code, and those of section 3 of Amended Senate Bill No. 326, likewise above quoted, are parts of

a code or system of laws relating to a particular subject, to wit, delinquent taxes on real property; and for this reason, as well as for the reason that they are found in the same act of the legislature, they should be construed so as to harmonize and to give effect to the intention of the legislature in the enactment of the statutory provisions here under consideration. In this view, it must be held that there is nothing in the provisions of section 5713, General Code, above quoted, which is in any way inconsistent with the provisions of section 3 of Amended Senate Bill No. 326. The partial payments therein mentioned are quite clearly the installment payments provided for by section 2672, General Code, as amended in the same act, the right to make which installment payments is limited by the provisions of section 3 of the act above quoted.

By the above quoted language of section 3 of the act, the provisions of section 2672, General Code, authorizing the payment by installments of delinquent taxes and assessments on real property, are specifically applied to such taxes and assessments which became delinquent at the August settlement in the year 1930 and thereafter, and to the penalties thereon. These provisions of section 3 of the act cannot be construed so as to apply the provisions of section 2672, General Code, to taxes and assessments which became delinquent in the year 1929 or in any prior year without reading into this section language which the legislature did not see fit to insert in the section. The legislature having specified the particular delinquent taxes and assessments to which the provisions of section 2672, General Code, apply, with respect to the time when such taxes and assessments became, or are to become delinquent, it is not competent by construction of this section to add to the particular matters therein specified. *Weirick vs. The Mansfield Lumber Company*, 96 O. S. 386.

Moreover, it is to be observed, in this connection, that the taxes and assessments which became delinquent at the time of the August, 1930, settlement were the first taxes and assessments which became due and payable after the depression which occurred in the fall of 1929 and which has since continued in effect, with the result that many persons who regularly paid their real property taxes and assessments prior to this time, have since been unable to do so. It is quite reasonable to believe that the legislature had this situation in mind in the enactment of the provisions of section 3 of the act, above quoted, extending the privilege of paying delinquent taxes and assessments by installments to those taxes and assessments which became delinquent at the August, 1930, settlement and thereafter. However, as above noted, it is enough for us to know that the legislature has so provided, and that the provisions of said section cannot be enlarged by construction.

By way of specific answer to the question presented in your communication, I am of the opinion that taxes and assessments on real property which became delinquent prior to the year 1930, and which are still delinquent, may not be paid in installments in the manner provided by section 2672, General Code, as said section is amended in Amended Senate Bill No. 326, enacted by the 89th General Assembly.

Respectfully,
GILBERT BETTMAN,
Attorney General.