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COUNTY TREASURER—AUTHORIZED TO SEEK AND OBTAIN COURT ORDER AND ACCEPT LESSER AMOUNT OF PERSONAL PROPERTY TAX—PROVIDED THE DELINQUENT TAXPAYER SHOWS SUFFICIENT CAUSE AND COURT SO ORDERS. §323.19, R.C.

SYLLABUS:

Where it appears that the county treasurer will be unable to collect the full amount of personal property tax, due to encumbrances in excess of the value of real property owned by a delinquent taxpayer, such treasurer may, under the authority of Section 323.19, Revised Code, seek and obtain an order of the court of common pleas and accept a lesser amount than appears on the personal property tax duplicate, provided the delinquent taxpayer has shown sufficient cause and such court has made a finding and issued an order to that effect.

Columbus, Ohio, October 7, 1959

Hon. Mary F. Abel, Prosecuting Attorney
Logan County, Bellefontaine, Ohio

Dear Madam:

The problem with which you are concerned is stated in your recent letter as follows:

“I would appreciate an opinion from your office upon the following question:

“In a suit by the County Treasurer for the collection of tax on personal property, when it appears that the full amount due cannot be collected by reason of encumbrances in excess of the order of the Court in the suit to accept a lesser amount than ap-value of the real estate, has the Treasurer authority to seek an pears upon the duplicate, if it appears that the lesser amount is

all that would probably be collectible? Attorney General's Opinion 2950 Voume 1, 1922 Opinions would seem to authorize such action when the Treasurer is proceeding under O.R.C. 323.19 for the collection of personal property tax."

Section 323.19, Revised Code, which you suggest as applicable to the problem at hand reads as follows :

"If the county treasurer is unable to collect by distress taxes assessed upon a person, corporation, executor, administrator, guardian, receiver, accounting officer, agent, or factor, he shall apply to the clerk of the court of common pleas in his county at any time after the semiannual settlement of the treasurer with the county auditor, and the clerk shall cause notice to be served upon such corporation, executor, administrator, guardian, receiver, accounting officer, agent, or factor, requiring him to show cause why he should not pay such taxes. If he fails to show sufficient cause, the court of common pleas, at the term to which such notice is returnable, shall enter a rule against him for such payment and the costs of the proceedings, which rule shall have the same force and effect as a judgment and shall be enforced by attachment or execution of such process as the court directs."

The syllabus of Opinion No. 2950, Opinions of the Attorney General for 1922, page 230, to which reference is made in your letter, reads as follows :

"There is no authority for the remission or compromise of a claim for personal taxes not erroneously or negligently charged; but where such taxes are not fully collectible because of the insolvency of the taxpayer and the existence of prior liens against his property subject to be seized and sold for taxes, and the property is in the hands of the receiver, the county treasurer may rightfully receive less than the sum charged if he is able to show that more is not collectible; and by asking for a rule to show cause under Section 2660 of the General Code, he may obtain the direct authority of the court for such a course."

In the course of said Opinion for 1922, it is stated at page 231 :

"There are * * * made up two delinquent lists, one for real estate (section 2601, General Code) and one for personal taxes (section 5694, General Code). The county treasurer has no further immediate responsibility as to the former, but has with respect to the latter. See the section just cited.

"The delinquent personal duplicate as made up by the auditor on the basis of the return of the duplicate at settlement time is to be delivered to the treasurer, who by section 5695, General

Code, is commanded 'to forthwith collect the taxes and penalties on the duplicate by any of the means provided by law.' The statute goes on to provide different 'means' for the collection of delinquent personal taxes in addition to those already provided for, but nowhere is it explicitly provided that the county treasurer who receives the delinquent property tax duplicate is personally charged with the taxes. Such a thing, of course, would be absurd. He is to collect, and collect what he can. In the absence of any restrictive provision then, it seems reasonably clear that after the delinquent duplicate is in the hands of the treasurer, he is clearly entitled to receive the amount that he sees fit in part payment of a charge against a person for taxes of this character. He is not, of course, permitted to release the person from all claims, and the charge remains on the duplicate. It thus appears that before settlement time, if good and sufficient reasons are given for the failure of the treasurer to collect all or any part of the personal tax, he may take what is offered (but not, of course, in full settlement) and the remainder only will go on the delinquent list. After settlement time he is likewise authorized to receive any payment that is offered as part payment. Neither he nor any other officer is authorized to remit the balance of the charge, however. So that if the offer of the receiver in this case is to pay the principal sum of the taxes with the understanding that the charge for the penalty is to be expunged, the strict answer to the question is that the offer cannot be accepted."

Then follows the citation of Section 2660, General Code, which is now Section 323.19, Revised Code, with the observation that an opportunity is thus given the treasurer to find a practical way out of the difficulty by securing an order of court declaring that a sufficient cause has been shown for his failure to collect the remainder of the tax. Such an order, concludes the opinion, would be a protection to the treasurer.

Accordingly, it is my opinion and you are advised that where it appears that the county treasurer will be unable to collect the full amount of personal property tax, due to encumbrances in excess of the value of real property owned by a delinquent taxpayer, such treasurer may, under the authority of Section 323.19, Revised Code, seek and obtain an order of the court of common pleas and accept a lesser amount than appears on the personal property tax duplicate, provided the delinquent taxpayer has shown sufficient cause and such court has made a finding and issued an order to that effect.

Respectfully,
MARK McELROY
Attorney General