

the counter after the last date limited for the payment of taxes. The case draws the general distinction that was pointed out in Opinion No. 1776 between the function known as 'receipt of payment of taxes' by the county treasurer and that known as 'collection'; but it forces a modification of some of the language in said Opinion No. 1776 by holding that some 'special effort in person or through agent' must be made by the county treasurer in order to constitute a 'collection' which may be used as the predicate of the penalty. The only direct statement on this point in Opinion No. 1776 which needs express modification is embodied in the following sentence:

'in contemplation of law the tax is not being *paid* after the last day limited for the payment of taxes; it is rather being *collected* by the treasurer.' This statement is incorrect."

The conclusion is therefore reached that the penalty of ten per cent provided in Section 5678, General Code, may not be charged by the treasurer when payment of the tax on real estate is made before the February settlement between the county auditor and county treasurer.

Summarizing, it is my opinion that:

1. The penalty of five per cent provided by Section 2656, General Code, applies to both personal and real estate taxes; but said penalty may not be legally charged in instances in which taxes are voluntarily paid between the twentieth day of January, to which date the collecting period has been extended by the county commissioners, and the time of the February settlement. In order legally to charge said five per cent penalty the county treasurer must proceed by distress or otherwise, as provided by statute, to collect said delinquent tax.

2. The penalty of ten per cent provided in Section 5678, General Code, may not legally be charged by the treasurer when payment of the tax on real estate is made before the time of the February settlement between the county auditor and county treasurer.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1680.

DOG—LICENSE—MUST BE LICENSED IN COUNTY WHERE KEPT OR HARBORED.

SYLLABUS:

Section 5652, General Code, requires an application for registration of any dog, subject to the provisions thereof, to be filed in the office of the county auditor of the county in which such dog is kept or harbored. Any registration tag otherwise issued would not constitute a valid registration tag.

COLUMBUS, OHIO, February 6, 1928.

HON. HAROLD A. PREDMORE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR:—This will acknowledge your letter dated February 1, 1928, which reads:

"We respectfully request your opinion relative to the following question:

John Smith, a resident of Clinton County, Ohio, is the owner of a certain dog. John Jones, a resident of Highland County, is keeping John Smith's dog for him on Jones' farm in Highland County. Smith obtained a license for his dog in Clinton County and then forwarded the license tag to Jones in Highland County to be attached to the dog's collar.

Incidentally the price of the dog's license in Clinton County is one dollar while the price of the dog's license in Highland County (by action of the County Commissioners) is two dollars.

Under House Bill 164, as enacted by the Eighty-seventh General Assembly of Ohio, is it legal to obtain a license for a dog in any county other than that in which the dog is actually kept or harbored?"

Your attention is directed to Section 5652, General Code, which provides in part as follows:

"Every person who owns, keeps or harbors a dog more than three months of age, annually, before the first day of January of each year, shall file together with a registration fee of one dollar for each male or spayed female dog, and a registration fee of three dollars for each female dog unspayed, *in the office of the county auditor of the county in which such dog is kept or harbored*, an application for registration for the following year * * * ." (Italics the writer's.)

By the plain terms of the above section the application for registration of a dog more than three months of age shall be filed "in the office of the county auditor of the county *in which such dog is kept or harbored*." In other words, the *situs* of a dog, for the purpose of determining in which county the application for registration should be filed, is the county in which such dog is kept or harbored.

Your attention is directed to Opinion No. 1265, dated November 16, 1927, addressed to the Bureau of Inspection and Supervision of Public Offices, the syllabus of which reads:

"A dog registration tag issued under the provisions of House Bill No. 164, (112 Ohio Laws, p. 347), is valid in any county of the state."

This opinion was rendered in response to the following question:

"Under House Bill No. 164, passed at the recent session of the General Assembly, if the owner of a dog residing in one county sells such dog to a person residing in another county of the state, would the new owner of such dog be required to register such dog in the county of his residence and pay the registration fee required, or are the dog licenses and tags issued in one county good in any county of the state?"

The conclusions therein reached were based upon the fact that the original tags for the dog in question were obtained from the county auditor of the county in which such dog was kept or harbored as provided by Section 5652, *supra*. In other words, if the original registration is had in compliance with the provisions of Section 5652, *supra*, then the tag issued therefor is valid during such year in any county of the state.

In the case that you present the application for registration was not filed in the office of the county auditor of the county in which such dog was kept or harbored and Section 5652, supra, was not complied with.

In view of the foregoing and answering your question specifically, it is my opinion that Section 5652, General Code, requires an application for registration of any dog, subject to the provisions thereof, to be filed in the office of the county auditor of the county in which such dog is kept or harbored. Any registration tag otherwise issued would not constitute a valid registration tag.

In connection with the above it should be pointed out that it is not meant to hold herein, that a dog should in all events be registered in the county where it happens to be at the time of registration. The test is, in what county of the state is the dog actually and in good faith "kept and harbored". And what is the proper county is a question of fact in each particular case.

I am enclosing herewith a copy of Opinion No. 1265 referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1681.

APPROVAL, BONDS OF FRANKLIN COUNTY—\$10,000.00.

COLUMBUS, OHIO, February 6, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1682.

APPROVAL, BONDS OF IRONTON CITY SCHOOL DISTRICT, LAWRENCE COUNTY—\$10,000.00.

COLUMBUS, OHIO, February 6, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1683.

PROBATE JUDGE—PREMIUM FOR BOND PAID BY COUNTY—MAY NOT RECOVER PREMIUM PAID PERSONALLY.

SYLLABUS:

1. *By the terms of Section 9573-1, General Code, a county is authorized and required to pay the premium of any duly licensed surety company on the bond of the Probate Judge of such county.*