

4532.

APPROVAL, NOTES OF EUCLID CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$60,000.00.

COLUMBUS, OHIO, July 29, 1932.

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

4533.

APPROVAL, FOUR RESERVOIR LAND LEASES IN LOGAN COUNTY, OHIO.

COLUMBUS, OHIO, July 29, 1932.

HON. WILLIAM H. REINHART, *Commissioner of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination the following reservoir land leases:

1. A lease to Ruth Wilgus, of Russells Point, Ohio, for property at Indian Lake, valued at \$800.00, and to be used for bridge trestle, cottage site and dock-landing purposes.

2. A lease to S. W. Lyon, of Lakeview, Ohio, for property at Indian Lake, valued at \$400.00, and to be used for cottage site and dock-landing purposes.

3. A lease to Callie A. Middleton Parrish, of Lakeview, Ohio, for property at Indian Lake, valued at \$600.00, and to be used for cottage site and dock-landing purposes.

4. A lease to Frank Boesch, of Island View, Logan County, Ohio, for property at Indian Lake, valued at \$100.00, and to be used for walkway, dock-landing and lawn purposes.

Finding the above leases to be executed in proper legal form, I have attached my signature thereto in approval.

Enclosed please find said leases.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4534.

COUNTY TREASURER—TAXES COLLECTED OUTSIDE OF TREASURER'S OFFICE—MAY RECEIVE EXPENSES NOT TO EXCEED AMOUNT NECESSARY TO COLLECT TAXES IN TREASURER'S OFFICE.

SYLLABUS:

That part of Section 2749, General Code, which is inconsistent with the provisions of Section 2746, General Code, enacted by the 89th General Assembly is superseded by the latter act, and the county treasurer is not entitled to be reim-

bursed for the expenses incurred in establishing tax receiving offices other than in the treasurer's office unless such expenses are not in excess of what the cost of collection would have been had all the taxes been collected from the treasurer's office.

COLUMBUS, OHIO, July 30, 1932.

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

GENTLEMEN:—This will acknowledge your request for opinion as follows:

“Section 2746 of the General Code, as amended in 114 O. L. page 732, provides that the county treasurer, when in his opinion it is necessary, and if no additional expense will be incurred, may open certain tax receiving offices outside of the treasurer's office.

Section 2749 of the General Code, which, so far as we know, has not been amended, provides for the payment of certain expenses incurred by the treasurer in connection with the establishment of these outside offices.

QUESTION: Does the amendment of Section 2746 have the effect of preventing the treasurer from receiving the expenses provided for in Section 2749?”

Section 2746, General Code, reads:

“When, in his opinion, necessary, *and if no additional expense is created thereby*, the county treasurer may open as many tax receiving offices as in his opinion are necessary for the receiving of taxes.” (Italics the writer's.)

Section 2749, General Code, referred to in your inquiry reads:

“On or before the tenth day of January and the tenth day of July of each year, the county treasurer shall file with the county commissioners an itemized statement of expenses incurred in the receiving of taxes, as herein provided, as follows: Transportation to and from the place of collection, office rent, and publishing, printing and posting of notices. When allowed by the county commissioners, such expenses shall be paid from the county fund, but the total expense so paid in any year shall not exceed one hundred dollars.”

Section 2746, General Code, was amended by the 89th General Assembly, by the addition of the language “and if no additional expense is created thereby.” Prior to such amendment, there was a limitation on the number of such tax receiving offices: “not to exceed one in each township.” This limitation was repealed and the limitation above quoted inserted.

There is a well established rule of interpretation of statutes applicable to this type of amendment to a statute. The first paragraph of the syllabus of *Board of Education of Hancock County vs. Boehm*, 102 O. S. 292, reads as follows:

“When an existing statute is repealed and a new and different statute on the same subject is enacted, it is presumed that the Legislature intended to change the operation of the law to the extent of the change in the language thereof.”

See also *Board of Education of Putnam County vs. Board of Education of Hartsburg Rural School District*, 112 O. S. 108, 114; *Keifer vs. State*, 106 O. S. 285.

If the language "if no additional expense will be incurred thereby" were not included in Section 2746, supra, Section 2749, supra, would authorize and limit the expense to \$100.00 per year for such purpose.

It is stated in the third paragraph of the syllabus of *Harig vs. McCutcheon*, 23 O. App., 500;

"The court, in construing a statute, cannot read any provision into or out of a statute."

Such rule is stated by Marshall, C. J., in *Stanton vs. Realty Company*, 117 O. S. 345, 349:

"It is a general rule of interpretation of statutes that the intention of the legislature must be determined from the language employed, and, where the meaning is clear, the courts have no right to insert words not used, or to omit words used, in order to arrive at a supposed legislative intent, or where it is possible to carry the provisions of the statute into effect according to its letter."

The language of Section 2746, General Code, is clear and unambiguous, that is: "if no additional expense will be incurred thereby," can mean but one thing; viz. if in the establishment of such tax receiving offices no expense is incurred in excess of that incurred in the collection of taxes prior to the establishment of such offices the county treasurer may open them; if an additional expense will be incurred, he may not open them. It is possible to carry out the provisions of the statute in this manner, since the statute only purports to grant the authority to open tax receiving offices when the condition may be complied with, otherwise taxes must be collected at the treasurer's office.

The expense in Section 2749, General Code, is clearly an "expense" and while there is a strong presumption against repeal by implication, there is also a rule, as stated in *Goff vs. Gates*, 87 O. S., 142, syllabus 1:

"An act of the legislature that fails to repeal in terms an existing statute on the same subject matter must be held to repeal the former statute by implication if the latter act is in direct conflict with the former, or if the subsequent act revises the whole subject matter of the former act and is evidently intended as a substitute for it."

It is therefore evident that to the extent that Section 2749, General Code, which was enacted in 100 O. L., 77, is inconsistent with the provisions of Section 2746, General Code (114 O. L., 732) and which provides the authority for opening branch tax collecting offices it is superseded by the section later enacted. I believe my conclusion is supported by both reason and authority, for if the legislature does not permit the opening of branch tax collection offices except when "no additional expense will be incurred thereby" it could have scarcely intended that the county treasurer should be reimbursed for the expense incurred in violation of its mandate.

I am therefore of the opinion that; that part of Section 2749, General Code, which is inconsistent with the provisions of Section 2746, General Code, enacted

by the 89th General Assembly, is superseded by the latter act, and the county treasurer is not entitled to be reimbursed for the expenses incurred in establishing tax receiving offices other than in the treasurer's office unless such expenses are not in excess of what the cost of collection would have been had all the taxes been collected from the treasurer's office.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4535.

APPROVAL, AGREEMENT FOR CONSTRUCTION OF DRAINAGE LINE
 IN FRANKLIN COUNTY, OHIO—THE NEW YORK CENTRAL RAIL-
 ROAD COMPANY.

COLUMBUS, OHIO, July 30, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration a proposed agreement by and between the Director of Highways and The New York Central Railroad Company covering the construction of a drainage line to be constructed in connection with the project to drain State Highway No. 1, Franklin County, Section A-1-a, Route No. 40, at its junction with Enlow Road, which said project is more fully described in said proposed agreement.

After consideration, it is my opinion that said proposed agreement is in proper legal form and when properly executed will constitute a binding contract.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4536.

INHERITANCE TAX LAW—HOW COUNTY SHALL ALLOCATE RE-
 FUNDER OF TAXES WHEN GENERAL FUND OF VILLAGE IS IN-
 SUFFICIENT TO PAY VILLAGE'S SHARE.

SYLLABUS:

1. The words "at the next semi-annual settlement of such undivided general taxes", used in Section 5348-12, General Code, do not limit the time at which the county treasurer may make the deduction authorized by such section, but merely designate the fund from which such deduction may be made.

2. Where, by reason of an excessive payment of inheritance taxes by a taxpayer, a refunder order has been issued by the Tax Commission of Ohio, after the disbursement of such fund to the municipality and the state, which order has been honored by the county treasurer and paid from the undivided inheritance tax funds in the hands of the county treasurer pursuant to the provisions of Section 5348-12, General Code, and by authority of such section the undivided inheritance tax fund has been reimbursed from the general fund in the treasurer's possession he is then authorized to reimburse the deficiency thus caused in the general fund by such reimbursement by applying the proceeds of levies for the general revenue fund