

to hear the several cases as provided by Section 11419-28, the jury being drawn for the several cases or for a definite time covering such time as will enable the jury to hear the several cases. The time for the hearing would need be arranged so as not to require the continuous sitting of the jury for longer than three weeks as provided by Section 11419-43, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

337.

SPECIAL ASSESSMENTS—CERTIFIED TO COUNTY AUDITOR BY
CLERK OF MUNICIPAL COUNCIL—ENTIRE NUMBER OF ASSES-
MENTS AND AMOUNT CERTIFIED AT ONE TIME.

SYLLABUS:

When special assessments have been levied by a municipality, payable in installments, and bonds, notes or certificates of indebtedness issued in anticipation of the collection thereof, under the provisions of Section 3892, General Code, the clerk of council shall, on or before the second Monday in September each year, certify to the county auditor the entire assessments, stating the amounts of the installments and the years within which said installments are payable.

COLUMBUS, OHIO, March 23, 1933.

HON. FRED W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“I would like to submit the following question for your consideration and decision:

Under Section 3892 of the General Code where it says ‘the clerk of the council, on or before the second Monday in September, each year, shall certify such assessment to the county auditor,’ etc., is it necessary for the clerk of the council to make said certification each year or will one certification place the duty and obligation on the county treasurer to collect all of said assessment?

The words ‘each year’ following September are rather hard to construe as to whether they refer to the installments of the assessment or whether they refer to the total assessment, but inasmuch as the statute says assessment instead of assessments, I believe that one certification by the clerk of the council is sufficient, but I would like to have your decision in the matter.

The city of W. certified certain street assessments to the county auditor in 1924 and the treasurer has been collecting those assessments up until the present time, but refused to collect same during the past tax collection period.”

Section 3892, General Code, provides as follows:

“When any special assessment is made, has been confirmed by council, and bonds, notes or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the clerk of the

council, on or before the second Monday in September, each year, shall certify such assessment to the county auditor, stating the amounts and the time of payment. The county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner and at the same time as other taxes are collected, and when collected, pay such assessment, together with interest and penalty, if any, to the treasurer of the corporation, to be by him applied to the payment of such bonds, notes or certificates of indebtedness and interest thereon, and for no other purpose. For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes. Each installment of such assessments, remaining unpaid after becoming due and collectible, shall be delinquent and bear the same penalty as delinquent taxes. The city solicitor or the regular and authorized legal representative of any such municipality is hereby authorized and directed to act as attorney for the county treasurer in actions brought under authority of section twenty-six hundred and sixty-seven of the General Code for the enforcement of the lien of such delinquent assessments."

The foregoing section was enacted in 1902 and amended in 1927. The 1927 amendment, however, did not affect the section in so far as your question is concerned.

This office in the year 1904 rendered an opinion upon the question which you present. This opinion is reported in the bound volume of Reports of the Attorney General for the years 1903-1908 at p. 92. The opinion reads as follows:

"I beg to acknowledge the receipt of yours of the 9th inst., and considering Section 94 of the Municipal Code, covering the certifying of estimates for local improvements, am of the opinion that the clerk of the council should certify all assessments, on or before the second Monday in September, to the county auditor for collection, and that the same should not be certified in installments annually, but that when the term 'assessment' is used it is meant to embrace all installments thereof, and when they are unpaid they should all be certified together so that the amount of the liens upon the property, arising by reason of assessments, may be able to be shown by an examination of the record of the same in the county auditor's office."

In view of the foregoing and in specific answer to your question, it is my opinion that when special assessments have been levied by a municipality, payable in installments, and bonds, notes or certificates of indebtedness issued in anticipation of the collection thereof, under the provisions of Section 3892, General Code, the clerk of council shall, on or before the second Monday in September each year, certify to the county auditor the entire assessments, stating the amounts of the installments and the years within which said installments are payable.

Respectfully,

JOHN W. BRICKER,
Attorney General.