

"An incorporated cemetery association is not relieved from an assessment for a street improvement by a statutory provision exempting its lands from taxation, such exemption being regarded as confined to taxes as distinguished from local assessments.

While this decision of the court discusses cemetery associations whose property is exempt from general taxation by reason of General Code section 5350, and church property is exempt from general taxation by reason of General Code section 5349, upon an examination of these sections it is to be noted that all of these sections were originally separate paragraphs of Revised Statutes section 2732. The decision of the Supreme Court in *Lima vs. Cemetery Association* would, therefore, be equally applicable to church property.

The case of *Jackson, Treasurer, vs. Board of Education of Cedarville Township Rural School District*, cited in your request, is affirmatory of the reasoning in the earlier holding of the Supreme Court of Ohio except that its subject matter is school property.

It is therefore my opinion that under Section 3812 of the General Code, a municipality has the authority to levy assessments for street improvements upon church property used exclusively for public worship, where such church property lies within the municipality.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3824.

DELINQUENT LAND TAXES—UNDER AMENDED SECTION 5704, GENERAL CODE, LIST IS TO BE CERTIFIED BY COUNTY AUDITOR AFTER AUGUST, 1932, SETTLEMENT—THEREAFTER LIST MAY BE PUBLISHED.

SYLLABUS:

Under Section 5704, General Code, as amended in Amended Senate Bill No. 326, enacted by the 89th General Assembly, the delinquent land tax list therein provided for is not to be made up and certified by the county auditor until after the settlement had by the county auditor with the county treasurer in August, 1932.

Inasmuch as the original provisions of Section 5704, General Code, requiring the county auditor to publish the delinquent land tax list between the twentieth day of December and the second Thursday in February, were repealed when said Amended Senate Bill No. 326 went into effect on October 14, 1931, there is now no authority for the publication of any delinquent land tax list until such list is made up and certified by the county auditor after said August, 1932, settlement.

COLUMBUS, OHIO, December 8, 1931.

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

GENTLEMEN:—This is to acknowledge the receipt from you of a communication which reads in part as follows:

“Section 5704, General Code, reads:
‘Immediately after each August settlement, the county auditor shall make and *certify* a list and duplicate thereof of all the delinquent lands in his county * * * and the duplicate shall be delivered to the county treasurer. Within *thirty* days after delivery of the duplicate the county auditor shall cause a list of the land on such *delinquent list and duplicate* to be published * * *’.

Am. S. B. No. 326 became effective October 14, 1931. The August settlement this year will be completed before this date.

Question 1. Is the above mentioned delinquent list and duplicate to be made up and certified to the county treasurer in the year 1931 or not until after the August settlement in 1932?

Question 2. Is the county auditor to cause a list of the land on such delinquent list and duplicate to be published in the year 1931 or not until after the August settlement in 1932?”

The questions presented in your communication require a consideration of the provisions of Section 5704, General Code, as amended in Amended Senate Bill No. 326, passed by the 89th General Assembly, which, as noted in your communication, became effective October 14th, 1931.

The questions presented likewise call for a consideration of certain prior existing statutory provisions relating to the making, certification and advertisement of delinquent tax lists with respect to taxes on land and other real property.

Section 5678, General Code, was amended by the legislature in the enactment of Amended Senate Bill No. 326, above referred to, but not with respect to any matter material in the consideration of the questions here presented. This section, before its amendment in said act, as after said amendment, stated the things necessary to give to unpaid taxes and assessments on real property the character of delinquency for the purposes of certification and collection in the manner otherwise provided by law.

Said section provided as follows:

“If one-half the taxes and assessments charged against an entry of real estate is not paid on or before the twentieth of December, in that year, or collected by distress or otherwise prior to the February settlement, a penalty of ten per cent. thereon shall be added to such half of said taxes and assessments on the duplicate. If such taxes and assessments and penalty, including the remaining half thereof, are not paid on or before the twentieth of June next thereafter, or collected by distress or otherwise prior to the next August settlement, a like penalty shall be charged on the last half of such taxes and assessments. The total of such amounts shall constitute the delinquent taxes and assessments on such real estate to be collected in the manner prescribed by law.”

Section 2601, General Code, which has not been amended since it was carried into the general code in 1910, provides:

"During the month of August of each year, the auditor shall make and record, in a book provided for that purpose, a list of all lands and town lots returned by the treasurer delinquent at the preceding settlement, describing them as described on the tax duplicate, charging thereon the unpaid taxes for the year next preceding, together with the penalty thereon, and also the taxes of the current year. He shall certify the correctness of such list and the date at which it was recorded, and sign it officially."

Section 5704, General Code, before its amendment in the recent act of the 89th General Assembly before referred to, provided for the publication by the county auditor of the list of delinquent lands made up by him under the provisions of Section 2601, General Code, above quoted, and to this end said section required that each county auditor should cause such list of delinquent lands in his county to be published once a week for two consecutive weeks, between the 20th day of December and the second Thursday in February next ensuing, said publication to be by newspaper in the manner therein provided. By said Section 5704, General Code, it was further provided that there should be attached to the list a notice that such delinquent lands would be certified to the Auditor of State as delinquent as provided by law.

With respect to your first question, it will be noted that prior to the enactment and effective date of Amended Senate Bill No. 326, in and by which Section 5704, General Code, was amended, there existed a complete statutory scheme for the making, certification and publication of delinquent land tax lists in the several counties of the state, and it is to be presumed that prior to the time when the amended Section 5704 went into effect on October 14th, 1931, the delinquent land tax lists for the year 1931 had been made up and certified by the county auditors of the several counties of the state in the manner required by the applicable provisions of the then existing law.

In this situation, the 89th General Assembly in and by the act above referred to, amended Section 5704, General Code. This section, as amended in said act, provides as follows:

"Immediately after each August settlement, the county auditor shall make and certify a list and duplicate thereof of all delinquent lands in his county. The first of such delinquent land lists so to be made by the county auditor shall also contain all lands heretofore certified as delinquent to the auditor of state and not redeemed, or with respect to which an action to foreclose the tax lien thereon has not been filed. Such delinquent land list and duplicate shall contain the description of the property as it appears on the tax list, the name of the person in whose name it is listed, and the amount of taxes, assessments and penalty thereon due and unpaid, together with the amount of interest, if any, accrued thereon to the date of such August settlement. The original land list shall be kept in the office of the county auditor and the duplicate shall be delivered to the county treasurer. Interest at the rate of eight per centum per annum on the total amount of taxes and assessments due and unpaid with respect to each tract or lot, or part of lot entered upon such delinquent tax list and duplicate shall be charged thereon from the date of such settlement. Within thirty days after delivery of the duplicate the county auditor shall cause a list of the lands on such delinquent list and duplicate to be published once a week for two conse-

cutive weeks in two newspapers of opposite politics in the English language published in the county and of general circulation therein.

There shall be attached to the list a notice that the delinquent lands will be entered upon the foreclosure list, as provided by law, unless the taxes, assessments, penalties and interest are paid. Such publication shall be considered to be for the information of the public, and the omission of such publication shall not in any respect affect the validity of the delinquent land list and duplicate, nor of any charge then or thereafter made thereon, nor any foreclosure proceedings or other remedies provided in this or the succeeding chapter for the collection of taxes, assessments, penalties and interest shown thereon together with costs and other charges, nor the enforcement of the state's lien therefor.

Provided, however, that the provisions of this section respecting the publication of a list of the lands on the delinquent list and duplicate shall not apply in counties having a population in excess of three hundred thousand, as determined by the last preceding federal census; but in lieu thereof the publication required in such counties by section 5718 of the General Code shall be made."

Section 3 of said Amended Senate Bill No. 326, in and by which Section 5701, General Code, was amended as aforesaid, provides that:—"This act shall take effect on and after the earliest date allowed by the constitution."

Said act was passed by the General Assembly on June 24th, 1931, and filed in the office of the Secretary of State after the same became a law by the lapse of time without the approval of the Governor, on July 16th, 1931; accordingly, the same went into effect under the constitution on the date above indicated, to-wit: October 14th, 1931.

Inasmuch as this act amending Section 5704, General Code, operates only prospectively from the time when the same became effective as a law (*Foundry & Machine Co. vs. Power Co.* 99 O. S. 429), the making and certification of delinquent land tax certificates by the county auditors of the several counties of the state and the publication thereof in the manner required by the provisions of Section 5704, General Code, as amended, can be done for the first time after said section went into effect in its amended form after the August settlement in the year 1932. It follows from this, by way of specific answer to your first question, that the delinquent land tax lists and duplicates provided for in said section are not to be made up and certified in the year 1931.

With respect to your second question, above stated, it is obvious that the conclusion reached on your first question requires me to hold that there can be no publication of the delinquent land tax lists made by the county auditors under the provisions of Section 5704, General Code, as amended in Amended Senate Bill No. 326, until the year 1932 when said publication will be made in the manner pointed out in said amended section which, in this connection, provides that "within thirty days after delivery of the duplicate, the county auditor shall cause a list of the lands on such delinquent list and duplicate to be published once a week for two consecutive weeks in two newspapers of opposite politics in the English language published in the county and of general circulation therein."

There remains for consideration, however, the question whether the delinquent land tax lists made up by the county auditors after the August, 1931, settlement with the county treasurers are required to be published in the manner provided by Section 5704, General Code, as the same read prior to its amendment in the recent act of the 89th General Assembly, above referred to. This

section as before noted provided for the publication of said delinquent land tax lists for two consecutive weeks between the 20th day of December and the second Thursday in February next ensuing the making of the said lists.

In an opinion of this office under date of March 18th, 1929 (Opinions of the Attorney General, 1929, Vol. I, page 295), it was held, following the rule of strict construction as to statutory provisions relating to the publication of delinquent land tax lists stated and applied in the case of *Lessee of Kellogg v. McLaughlin*, 8 Ohio, 114, and in the case of *Magruder v. Esmay*, 35 O. S. 221, that under the provisions of said section the publication of the lists of delinquent land for any year is required to be made between the 20th day of December and the second Thursday in February, next ensuing, and where said lists are not published between said dates, there is no authority for the publication of the lists at a later date.

However, as to this it is observed that said Section 5704, General Code, as it read prior to the enactment of Amended Senate Bill No. 326, is repealed by said act, which repeal, of course, became effective when said act went into effect on October 14th, 1931. It follows from this that there is not now any statutory authority for publishing delinquent land tax lists made by the county auditors for the year 1931, between the 20th day of December, 1931, and the second Thursday of February, 1932, as formerly provided for in said section; and that no publication of any delinquent land tax lists is now required or authorized until after the making and certification of delinquent land tax lists and duplicates following the August settlement in 1932.

In this connection, and as a consideration pertinent to the above discussion, it may be noted that matters relating to general tax levies are not pending proceedings within the meaning of the familiar provisions of Section 26, General Code, (*Alexander v. Spencer, Treas.*, 13 O. C. C. (n. s.) 475; 83 O. S. 492); and it is conceived that the same rule applies to statutory provisions relating to the collection of delinquent taxes prior to the time when individual rights may have attached with respect to proceedings for the sale of particular tracts or parcels of delinquent lands in foreclosure, or in similar proceedings for the sale of lands for the collection of taxes. (See *State ex rel. vs. Purcell*, 31 O. S. 352).

Respectfully,

GILBERT BETTMAN,

Attorney General.

3825.

BANK—MAY AMEND ARTICLES OF INCORPORATION FROM COMMERCIAL SAVINGS BANK TO SPECIAL PLAN BANK PROVIDED BY SECTION 710-180, GENERAL CODE.

COLUMBUS, OHIO, December 8, 1931.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“May a bank organized under the laws of this state for the purpose of transacting the business of a commercial and savings bank, by amend-