

3738.

TAXES AND TAXATION—WHERE BUILDING COSTING MORE THAN \$200.00 IS ERECTED OUTSIDE OF SUBDIVISION HAVING SYSTEM OF BUILDING REGISTRATION—NOT ON TAX DUPLICATE—HOW AND WHEN PLACED ON DUPLICATE BY COUNTY AUDITOR—CANNOT GO BACK FIVE YEARS.

If a building costing more than \$200.00 has been erected outside of a subdivision having a system of building registration and inspection since September 2, 1919, and has not been placed on the duplicate for taxation and its existence is now discovered in the year 1922, the county auditor may place it on the duplicate for the year 1922 and also for the years 1921 and 1920. In no other cases may action be taken under section 5564 of the General Code; so that in the year 1922 it is not possible to go back five years in adding omitted improvements.

Opinion No. 3013 adhered to and supplemented.

COLUMBUS, OHIO, November 20, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission has informally suggested that Opinion No. 3013 given to the Commission on April 21, 1922, may require some modification in view of the provisions of section 5564 of the General Code, which was not referred to therein.

The opinion in question held that under section 5573 of the General Code there was no authority in the county auditor to place on the duplicate for past years with or without penalty an improvement on real estate which had been omitted from the duplicate for said past years when the lot or tract upon which the improvement was situated had been properly listed during such period of time. Said section authorizes the auditor to take such action with respect to omitted lots and lands for the five years preceding the date of discovery unless the land has changed ownership within that time.

The former opinion is adhered to in its entirety, as it really concerns nothing excepting the section referred to (section 5573 G. C.). One statement in the opinion, however, was to the effect that there "is now no authority in the county auditor to place omitted improvements on the duplicate for past years." Some modification of this statement is required.

Section 5564 of the General Code was passed 108 O. L. Pt. 1, p. 606, effective September 2, 1919, and provides as follows:

"For the purpose of enabling the county auditor to determine the value and location of buildings and other improvements every individual, partnership, incorporated company, or otherwise, except railroads and public utilities whose property is valued for taxation by the state tax commission, who shall erect or construct any building or other improvement costing over two hundred (\$200.00) dollars upon any lot or land within any of the various townships, villages or municipalities *not having and requiring a system of building registration and inspection* shall within sixty days after *said* building or other improvement shall have been commenced, notify the auditor of the county within which such lot or land is located, that said building or improvement has been completed or is in process of construc-

tion. Said notice shall be in writing and contain an estimate of the cost of said building or improvement and such description of the lot or land and ownership thereof as will identify the lot or tract of land on said auditor's duplicate. *Upon failure to give notice as herein provided, and upon said improvement not being returned for taxation as otherwise provided by law*, and upon the discovery of such building or improvement by the county auditor after the same has been erected or constructed, the said building or improvement shall be appraised by the county auditor at its true value in money and placed upon the duplicate together with a tax penalty of fifty per cent for *each of the years from the date of the erection or construction to the date of discovery*. Said county auditor may enter, by himself, or deputy within reasonable hours, and fully examine all buildings and structures of every kind, which are by this title either liable to or exempt from taxation."

The following comments are elicited by an analysis of the foregoing section:

(1) The section applies only to real estate outside of municipalities having a system of building registration and inspection.

(2) The section has no five year limitation in it, so that the authority of the auditor to place the omitted improvement on the duplicate for past years extends to each year in which it has been omitted.

(3) Only such improvements as cost over \$200.00 are within the scope of this section.

(4) The auditor is not authorized by this section to place any property on the duplicate unless there has been a default on the part of the owner in respect of his obligation under the first part of the section. That is to say, if a building were constructed prior to 1919 and it failed to get on the tax duplicate, even though it cost originally more than \$200.00 and was located outside of a municipality having a system of building registration and inspection, the auditor could not upon discovering the existence of such building in the year 1922 place the same on the duplicate for any past years with penalty.

It follows that the operative effect of section 5564 of the General Code is limited to the following circumstances:

If a building costing more than \$200.00 has been erected outside of a subdivision having a system of building registration and inspection since September 2, 1919, and has not been placed on the duplicate for taxation and its existence is now discovered in the year 1922, the county auditor may place it on the duplicate for the year 1922 and also for the years 1921 and 1920. In the opinion of this department, the authority does not exist to place it on the duplicate for the year 1919 as the act amending section 5564 became effective in that year after the date of levying taxes, and of course, long subsequent to the date as of which the lien for taxes attaches. It is true that by several sections, such as 2591 of the General Code, provision is made for the correction of the duplicate by reductions in value made later than the third of September, and that from section 5613 of the General Code and other similar sections, it is apparent that the final value of property for taxation purposes is not fixed until after that date. But these provisions for adjustments relate to value and not to listing, and in the opinion of this department September 3rd, in the given year is too late to list property for taxation in the absence of a specific statute authorizing such action with effect upon the duplicate then about to be made up. Section 5564 of the General Code lacks any such specific direction.

In no other cases may action be taken under section 5564 of the General Code;

so that in the year 1922 it is not possible to go back five years in adding omitted improvements, which was the precise question submitted and determined in opinion No. 3013.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3739.

SIDEWALKS—OUTSIDE OF MUNICIPALITIES—WHERE CONTRACTS ENTERED INTO BY COUNTY SURVEYOR—NO PART OF SERVICES OF COUNTY SURVEYOR OR ASSISTANTS IN COST FOR ASSESSMENT PURPOSES—SEE SECTIONS 7205 AND 7206 G. C.

1. *If sidewalk improvements outside of municipalities are undertaken as authorized by sections 7205 and 7206 G. C., contracts are to be entered into by the county surveyor and not by the county commissioners or township trustees.*

2. *No part of the services of the county surveyor or any of his regularly employed assistants in engineering, inspection or superintendence of such sidewalk improvement is to be included in the cost for assessment purposes. However, the expense of assistants specially employed for a particular project may be so included.*

COLUMBUS, OHIO, November 20, 1922.

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

GENTLEMEN:—You have requested the views of this department as to the following:

“Sections 7205 and 7206 G. C. relate to the building of sidewalks along public highways outside of municipal corporations.

Question 1: May contracts for the construction of such sidewalks be made by the county commissioners or township trustees or must they be made by the county surveyor under the direction of the commissioners or trustees?

Question 2: May the cost of engineering, inspection and superintendence of construction of such sidewalks be included in the cost of the improvement, a part or all of which is to be assessed against abutting property owners in proportion to benefits?”

Section 7205 G. C. reads in part:

“The county surveyor, upon the order of the county commissioners or township trustees, shall construct or cause to be constructed sidewalks of suitable materials, along the public highway, without any municipal corporation, upon the petition of a majority of the abutting property owners, and the expense of the construction of such sidewalks shall be paid by the