

The provision of Section 7869 of the General Code placing in the county board of education the power and authority to determine the length of time a county teachers' institute may remain in session and limiting same to not more than five days first appeared in the School Code in 104 O. L. p. 157, passed February 6th, 1914. While this section fixes a maximum period of five days, it does not specifically change, amend or repeal the minimum of four days fixed by Section 7874 of the General Code and does not in terms or spirit conflict with said section. Furthermore, Section 7874 of the General Code was changed in other respects and re-enacted February 16, 1914, still embodying the same four day minimum, thereby further evidencing the intention of the legislature to continue the four day minimum period for teachers' institutes.

Therefore, it is not believed county boards of education can legally provide for holding a teachers' institute for a period of two or three days. Such institute should continue for at least four days.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

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1999.

TAXES AND TAXATION—IN COUNTY WHERE A REAPPRAISAL OF PROPERTY IS STILL IN PROGRESS AUDITOR SHOULD BASE TAXES ON THE VALUES FOUND BY SUCH REAPPRAISAL WHEN COMPLETED—THE VALUES USED DURING PREVIOUS YEARS MAY NOT BE USED.

*SYLLABUS:*

*When the county auditor has made a finding that the property of each or any political subdivision within the county is not on the duplicate at its true value in money, and such finding is confirmed by the county commissioners, it is the duty of the county auditor to proceed with and complete the reappraisal of the property in such subdivisions so that the taxes for the current year may be based on the values found by such reappraisal and the values used during the previous year may not be used as a basis of assessment.*

COLUMBUS, OHIO, November 26, 1924.

*The Tax Commission of Ohio, Columbus, Ohio.*

Gentlemen:—

I acknowledge receipt of your recent letter as follows:

“Under the provisions of Section 5548, General Code, the Auditor of Delaware County, early in the year 1924, reported to the Commissioners of that county that he found that the real estate was not assessed at its true value in money. The Commissioners confirmed this finding and ordered a re-valuation. The question now arises as to whether the Auditor may use the same values as were used in the 1923 duplicate for the current year or whether he must use the reappraised values. We respectfully call your at-

tion to an opinion of the Attorney General in the 1920 report, Vol 1, page 253. As the tax duplicate must be prepared at an early date we kindly request you to give this matter your early consideration."

You also transmit copy of the finding of the Auditor of Delaware County and a transcript from the Commissioners' Journal showing the confirmation of these findings by the board of county commissioners. This finding and transcript read as follows:

January 3, 1924.

The Board of County Commissioners of Delaware County.  
Gentlemen:—

In compliance with Section 5548, G. C. of O., I have to make the following report:

I find that the real estate in each township, village, ward, or city of Delaware County is not assessed at its true value in money, as the same now appears on the tax duplicate.

Very respectfully,

W. J. MAIN,  
*County Auditor.*

Commissioners' Journal, No. 18, page 317.

Whereas, In compliance with Section 5548, the County Auditor did file his findings with this Board on January 7, 1924, as evidenced by our minutes of that date;

Whereas, This Board did on said date, fix this 19th day of January, 1924, at 2:00 P. M., as the time at which a hearing should be had on said findings;

Whereas, Notice of such hearing has been given in compliance with law, proof of which is filed with this Board.

Resolved, That we, the Board of County Commissioners, do hereby determine that the real estate in each township, village, ward or city, is not on the duplicate at its true value; a great part of the farm lands being valued less than the value on the duplicate; while real estate in towns and villages is being valued more than the values on the duplicate.

Resolved, That the Clerk be and is hereby instructed to furnish a certified copy of this resolution to the County Auditor, for his further compliance with Section 5548, General Code of Ohio.

W. J. MAIN,

Clerk, Commissioners of Delaware County, Ohio, Auditor of Delaware County, Ohio.

The opinion to which you call our attention (Opinions, Attorney General, 1920, Vol. 1, page 253) did not deal with the precise question presented here. In that case the question before the department related to the right of the commissioners to pay the expenses of a reappraisal of property which was begun in the spring of the year 1920 and completed in the year 1921. The question of whether or not the values for the year 1919 could still be used in the year 1920 because of the failure to complete the reappraisal in 1920 was not raised in that case. There is an inference, however, to be drawn from the language of the opinion that such values may be used, and to the extent to which the opinion justifies this inference, I find it necessary to differ from the opinion of my predecessor.

Article XII, Section 2 of the Constitution of Ohio reads as follows, so far as it is applicable to this question:

"Laws shall be passed, taxing by a uniform rule, all moneys, credits,

investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, \* \* \*."

The statutes passed by the General Assembly of Ohio providing for the valuation and taxation of property in Ohio have been passed with the intent to conform to the letter and spirit of this constitutional provision.

Section 5548 of the General Code, so far as it is applicable to this question, reads as follows:

"Each county is made the unit for assessing real estate for taxation purposes. The County Auditor in addition to his other duties, shall be the assessor for all the real estate in his county for all purposes of taxation, provided that nothing herein shall affect the power conferred upon the tax commission of Ohio in the matter of the valuation and assessment of the property of any public utility. Annually between the first day of January and the first day of February, the county auditor shall ascertain whether the real estate in each township, village, ward or city is assessed for taxation in the aggregate at its true value in money, as the same then appears on the tax duplicate. If he finds that it is assessed at its true value in money, in any such township, village, ward or city, he shall, subject to the provisions hereinafter made, enter such valuations upon the tax list and duplicate for the current year. In such event, and unless he finds that such property is not assessed at its *true value in money*, in each such subdivision, such assessments shall constitute the valuation for taxation for the current year, subject to the provisions hereinafter made. Said county auditor shall submit his findings concerning the valuation of such real estate to the board of county commissioners of his county, and said board shall, at a hearing fixed within not less than ten nor more than twenty days thereafter, confirm, modify or set aside the same by order entered on the journal of said board. Notice of such hearing shall be given by publication in a newspaper of general circulation in the county. If by such order it be determined that the real estate in any such subdivision is not on the duplicate at its true value in money, *then such county auditor shall proceed to assess such real estate in such subdivision or subdivisions.* \* \* \*

Such experts, deputies, clerks and other employes, in addition to their other duties, shall perform such services as the county auditor may direct, in ascertaining such facts, description, location, character, dimensions of buildings and improvements, and such other circumstances reflecting upon the value of such real estate, as will aid the county auditor in fixing *its true value in money.*"

Section 5548-1, supplementing this section, reads in part as follows:

"*In any year after the year in which an assessment has been made by the county auditor of all the real estate in any subdivision as herein provided, it shall be the duty of such county auditor at any time to revalue and assess any part of the real estate contained in such subdivision where he finds that the same has changed in value, or is not on the duplicate at its true value in money, and in such case he shall determine the true value thereof in money, as herein provided for assessing the entire property in any such subdivision.* \* \* \*"

Section 5554 reads in part as follows :

"The county auditor, *in all cases*, from the best sources of information

within his reach, shall determine, as near as practicable, the true value of each separate tract and lot of real property in each and every district, according to the rules prescribed by this chapter for valuing real property. \* \* \*

Section 5605 reads in part as follows:

“\* \* \* On the first Monday of July, *annually*, the county auditor shall lay before the county board of revision the returns of his assessment of any real property *for the current year*, and *such board shall forthwith proceed* to revise the assessment and returns of such real property. \* \* \*”

We believe it is evident from the consideration of these provisions that it is the intent of the statute that real estate shall be valued for purposes of taxation every year. The finding of the county auditor that property is on the duplicate at its true value in money in each political subdivision is his official act of assessment of property for the current year. The duty of making such finding, or of making a finding that it is not on the duplicate for each year, is mandatory, and without such finding no valid levy for taxes for the county or its subdivisions can be made. The purpose of submitting the finding in either case to the board of county commissioners for them to confirm or to set aside is to give some check on the judgment of the auditor as to such facts. When the auditor has made a finding that the real estate is not on the duplicate at its true value in money in each or any political subdivision, and such finding is confirmed by the board of county commissioners, this action is a final determination, and a duty is thereby imposed upon the auditor in mandatory terms to proceed with a re-assessment to find such true value.

It is true that the provisions of Section 5605 fixing the time at which returns shall be made is directory, but there can be no doubt that it was the legislative intent that such returns be made so as to become the basis of taxation for the current year. This duty is enjoined upon the auditor, and is mandatory.

The fallacy of adopting the opposite view becomes at once apparent when we consider its results in practical operation. The constitution unequivocally provides that all property not exempt shall be taxed by a uniform rule according to its true value in money. While the courts of this state have recognized that it is impossible to attain this end because of the limitations of the human agency through which the valuation must be made, they have also universally adopted the principle that where the failure to value such property at its true value in money arises, because of an abuse of discretion by the valuing officers, or because of unlawful disregard of their duty, such valuation is illegal and a tax based upon it cannot be collected.

In the case of *McGurdy, Gdn. vs. Prue, Treas.*, 59 O. S., 465, the court says at page 475:

“It follows, therefore, that as far as concerns this branch of the case, the claim of the plaintiff to relief rests upon the mistaken judgment of the assessing officers and equalizing boards. He does not contend that his ward’s property was taxed at more than its true value in money, but that by erroneous judgment of the taxing officers and boards throughout the state all other property was valued too low. \* \* \*

We think, therefore, that where property has been valued according to the constitutional rule, and has been taxed upon that basis, its owner cannot defend against its payment by showing that, on account of the erroneous judgment of assessing officers and boards of equalization, all other property within the state or district has been valued too low, and taxed upon that lower valuation. For inequalities thus arising no relief can be given by the courts. The remedy, if any exists, lies in the selection of officers who possess a sounder judgment.”

In the present case, however, an attempt to use the valuations adopted for the year 1923 in face of the fact that both the auditor and the commissioners have expressed it as their official opinion that such values were not the true values in money, can be considered only as a deliberate and intentional disregard of both the constitutional and statutory provision that such valuation shall be equal to its true value in money. Certainly it could not be contended in such case that the failure to put such property on at its true value was due to the erroneous judgment of the officers.

In the case of *Wagner vs. Loomis*, 37 O. S., 571 at page 580, the Supreme Court of this state said:

“There is nothing in the constitution which requires property to be taxed according to the same per cent. of its true value in money, save only the one hundred per cent.”

In the case of *Exchange Bank vs. Hines*, 3 O. S., 1, the court says at page 15:

“What is meant by the words ‘taxing by a uniform rule?’ And to what is the rule applied by the constitution? No language in the constitution, perhaps, is more important than this; and to accomplish the beneficial purposes intended, it is essential that they should be truly interpreted, and correctly applied. \* \* \* Taxing by a uniform rule requires uniformity, not only in the rate of taxation, but also uniformity in the mode of the assessment upon the taxable valuation.”

The Federal District Court for the Southern District of Ohio in *City Railway Co. vs. Martin L. Beard, County Treas.*, 20 O. L. R. 213, commenting upon this provision of the Constitution of Ohio, says:

“The constitution contemplates that an exact equality of burden shall be imposed on all taxable property. Conceding that, due to the frailty of human judgment, such a result is unattainable, substantial uniformity is possible and should be obtained.”

From these considerations, we believe the conclusion is inescapable that the only duplicate which may be used by the authorities of Delaware County is the duplicate obtained by the appraisal made in the year 1924, and that if this is not now complete, it must be completed by the authorities charged with that duty, even though it is impossible to complete it by the time fixed by statute.

Respectfully,

C. C. CRABBE,  
*Attorney General.*