

of this issue less than the whole amount, I feel that I am required to disapprove the whole issue on this ground as well as on those before mentioned.

For the reasons above mentioned I am of the opinion that you should decline to purchase the above issue of bonds.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2311.

APPROVAL, BONDS OF DILLONVALE VILLAGE SCHOOL DISTRICT IN AMOUNT OF \$30,000.

COLUMBUS, OHIO, August 10, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2312.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, VINTON COUNTY, OHIO.

COLUMBUS, OHIO, August 10, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2313.

TAX COMMISSION—WITHOUT AUTHORITY TO ENTERTAIN MOTION FOR REVIEW AND CORRECTION OF ITS DETERMINATION RESPECTING VALUE OF PUBLIC UTILITY PROPERTY AFTER SUCH DETERMINATION CERTIFIED TO COUNTY AUDITOR—SEE SECTION 5517 G. C.—TIME OF CERTIFYING, DIRECTORY—WHEN COMMISSION MAY ENTERTIAN APPLICATION FOR CORRECTION OF INITIAL VALUATION.

1. *The Tax Commission of Ohio no longer has authority under section 5517 of the General Code to entertain a motion for review and correction of its determination respecting the value of public utility property, after such determination has been certified to the county auditor.*

2. *The statutory provisions respecting the time of certifying such determinations to the county auditor are directory merely.*

3. *The commission may entertain an application for correction of the initial*

valuation placed by it upon public utility property at any time between the making of that valuation and the date of certification thereof to the county auditor.

COLUMBUS, OHIO, August 10, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission requests the opinion of this department as follows:

“May the commission under the authority of section 5517 G. C., upon an application filed by a public utility as provided in said section, make a correction in the value of its property after the same has been certified to the county auditor?”

Is the date when the commission is required to certify the value of a public utility to the county auditor as given in sections 5447 and 5458 G. C. mandatory or merely directory?

What is the latest date upon which a public utility may file an application for a correction of the value of its property as determined by the commission on the dates provided in sections 5423 and 5451 G. C., and upon which the commission may act?”

The sections requiring interpretation are as follows:

“Sec. 5517. Any bank, public utility or corporation may be heard by the commission upon the question as to the correctness of any determination, finding or order of the commission after the same has been made. Application to the commission for a review of any determination, finding or order by it made, must be filed within sixty days after the passage of this act, or within sixty days from the date of the certification thereof by the commission to the proper officer. The commission, upon such application, may make such correction in its determination, finding or order, as it may deem proper, and its decision in the matter shall be final. Such correction shall be certified to the proper official, who shall correct his records and duplicates in accordance therewith. * * *

“Sec. 5611-1. Whenever the tax commission of Ohio determines the valuation, or liability, of property for taxation, * * * in case of an original valuation or other original proceeding of such board, * * * it shall, by registered mail, certify its action to the person in whose name the property is listed, * * * at the same time and in the same form in which such action is certified to the county auditor, and such determination shall become final and conclusive for the current year, unless reversed, vacated, or modified as hereinafter provided.”

This section, which is later in point of enactment than the one first quoted (see 107 O. L. 550), is followed by sections providing for proceedings for reversal, vacation and modification by petition in error filed in the court of common pleas of the proper county.

“Sec. 5423. On the second Monday of June of each year, the commission shall ascertain and assess, at its true value in money, all the property in this state of each such public utility, subject to the provisions of this act, other than express, telegraph and telephone companies.”

"Sec. 5447. On the second Monday of July, the commission shall certify such apportionment to the auditor of each county in which any of the property of the public utility is located."

This section belongs with section 5423, last above quoted. In connection with these two sections 5426 and 5427 should be noticed. They provide as follows:

"Sec. 5426. Before the assessment of such property each of such public utilities shall have the right, upon written application, to appear before the commission and to be heard in the matter of the valuation of its property for taxation."

"Sec. 5427. Between the date herein fixed for the assessment of the property of any such public utility for taxation by the commission, and the date herein fixed for the certification by it of the apportioned value to the county, or to the several counties as herein provided, the commission may, on the application of such public utility or any person interested therein, or on its own motion, correct the assessment or valuation of its property in such manner as will in its judgment make the valuation thereof just and equal."

Sections 5451 and 5458 of the General Code are also referred to in the communication of the commission. They need not be quoted. They are substantially like the two sections last above quoted, excepting that they relate exclusively to express, telegraph and telephone companies. With them should be considered sections 5453 and 5454 of the General Code, which in their relation to express, telegraph and telephone companies are precisely like sections 5426 and 5427, above quoted, which relate to other public utilities.

Turning back to section 5517 G. C., the first of the above quoted sections, it is to be observed that that section contemplates action by the commission after the date of certification of an order of the commission to the proper officer. This is sufficiently apparent upon the face of so much of the statute as is quoted herein, but it is made even more so by considering the whole section. In other words, the right to be heard upon an application for review and correction under section 5517 does not accrue until the commission has finally acted and certified the result of its action. Another right to a hearing is given by section 5426 and the corresponding section relating to express, telegraph and telephone companies, and power to correct is given to the commission by section 5427 and the corresponding section relating to express, telegraph and telephone companies. But these hearings and corrections precede the final determination of the commission. The procedure is as follows: The commission first, on the dates provided in sections 5423 and 5451 of the General Code, makes what may be termed a "tentative assessment." So far, the assessment is, so to speak, within the breast of the commission; it has not ripened into a final act, as it has not been certified to the collecting officer. It has the effect, so to speak, of a rule to show cause. To be sure, no notice of this action is required to be given to the utility the value of whose property is under consideration; but this is not necessary inasmuch as the dates are fixed and the proceeding is a pending one required by law to be taken in each year at such time, so that all persons have notice of its pendency and are put upon their inquiry as to what transpires within the commission. The commission is required by law to keep a journal of its proceedings, and interested parties have no difficulty in practice in ascertaining what the commission has tentatively done.

Then, after this initial assessment, which has the legal effect above described, there is opportunity to be heard upon the valuation, and the commission has authority to correct the assessment, which is still subject to its control. The next step then is certification to the collecting officer, who in the case of property valuations is of course the county auditor, for the purpose of making up the duplicate which goes to the county treasurer. At this stage the process of assessment is final; but the original Hollinger law of 1911 (102 O. L. 253) provided for another administrative remedy in the shape of an application to the commission for review and correction. Said section 5517 is very broad in its terms, and applies not only to property valuations but also to excise and franchise tax determinations. If it still governs property valuations, there is a right at any time within sixty days to apply to the commission for this purpose. Another remedy, however, has since the enactment of said section 5517 been afforded to those aggrieved by the action of the commission in the matter of the determination of property valuations. This remedy is that provided for in sections 5611-1 et seq. of the General Code. The right to this remedy clearly accrues, under the terms of that section, on the date when the action of the commission is certified to the collecting officer, who in this instance is specifically named as being the county auditor.

The question to be considered in connection with the commission's first inquiry is as to whether or not section 5611-1 is an exclusive remedy, or whether it is cumulative to that provided for in section 5517. In other words, may a utility which is not satisfied with its property valuation after the same is certified to the county auditor have its choice of a review and correction by the commission and a petition in error to the court of common pleas, or may it have both these remedies, or may it have one of them and, if so, which one?

In the opinion of this department, the answer to this question is furnished by section 5611-1 itself when it provides that upon certification the commission's determination "shall become final and conclusive * * * unless reversed, vacated, or modified as hereinafter provided." It is believed that this provision is inconsistent with the continuance of the former power of the commission to review and correct its own determinations in property tax matters. The commission's first question is accordingly answered in the negative.

The commission's second question is answered by the statement that all time provisions in tax statutes are, unless the contrary intent clearly appears, to be construed as directory only and not as mandatory; for otherwise the mere ministerial failure on the part of the commission to take action at a given time would operate to defeat the public revenues. The proposition involved is really an elementary one and it need not be supported in this opinion by the citation of authority.

The answers given to the first and second questions dictate the following answer to the commission's third question:

Literally, a public utility no longer has any right to file with the commission an application for the review and correction of the commission's determination. It has only the right to apply to the commission for a correction of the tentative assessment under the remedial sections above referred to. If this right be regarded as a right to file an application for correction of value within the meaning of the commission's third question, then that question is to be answered by the statement that this right expires when the commission has certified its action to the county auditor. That action should be taken at the times provided for in sections 5447 and 5458 of the General Code, but these dates are, as hereinbefore stated, directory merely.

Respectfully,

JOHN G. PRICE,
Attorney-General.