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SYLLABUS:

Section 2305.07, Revised Code, is not a bar to a proceeding instituted to enforce a lien for unpaid street assessments pursuant to Sections 323.25 and 323.28, Revised Code.

Columbus Ohio, May 8, 1963

Honorable William H. Irwin
Prosecuting Attorney
Belmont County
St. Clairsville, Ohio

Dear Sir:

Your request for my opinion has included therewith an attachment that refers to seven ordinances for street repaving or surfacing with respect to real estate of a board of education. In one instance, the assessment "ended" June, 1929, which it is assumed was the final date for payment. In another instance, the date is June, 1937, with intermediate dates in the case of the other five assessments.

Your specific questions in respect of the foregoing are:

"1. Whether or not the statute of limitations applies to assessments placed on a tax duplicate by municipalities against a school board.

"2. If the answer to the foregoing question is in the affirmative barring a city from collecting these assessments, which statute applies?

"3. If the statute of limitations applies and the city is barred from collecting these assessments, how can the municipality or school board proceed to have them taken off the tax duplicate?"

You have advised that your research includes noting the provisions of Section 2305.07, Revised Code, which reads:

"Except as provided in section 1302.98 of the Revised Code, an action upon a contract not in writing, express or implied, or upon a liability created by statute other than a forfeiture or penalty, shall be brought within six years after the cause thereof accrued."

It is my view that this above section is not of controlling effect in the light of the terms of the code provisions now called to attention.

Section 323.25, Revised Code, provides:

"Four years after taxes and assessments or either, charged against lands or lots, or parcels thereof, upon the tax duplicate, or any part of such taxes or assessments, are not paid within the time prescribed by sections 323.12 and 323.17 of the Revised Code, the county treasurer may enforce the lien of such taxes and assessments, and any penalties on such taxes and assessments, by civil action in his name as treasurer, for the sale of such premises, in the court of common pleas of the county in the same way mortgage liens are enforced.

"Upon application of the plaintiff, the court of common pleas shall advance such cause on the docket, so that it may be first heard."

Section 323.28, Revised Code, states in pertinent part:

"A finding shall be entered of the amount of taxes and assessments or any part thereof as are found due and unpaid in a proceeding under section 323.25 of the Revised Code, and for penalties, interest, cost, and charges, for the payment of which the court of common pleas shall order such premises to be sold, without appraisal, for not less than the total amount of such finding and costs, unless the county treasurer applies for an appraisal, in which

event the premises shall be appraised in the manner provided by section 2329.17 of the Revised Code, and shall be sold for at least two thirds of the appraised value. * * *
*No statute of limitations shall apply to such action. * * **

(Emphasis added)

The conclusion heretofore expressed is further supported by the syllabus in Opinion No. 415, Opinions of the Attorney General for 1927 at page 724, which reads:

“Under the provisions of Section 2670, General Code, there is no statute of limitations applying to an action brought under Section 2667, General Code, to enforce the lien of a special assessment charged against real estate, and such an action may be brought to enforce a lien for a special assessment levied by either the Director of Highways and Public Works or county commissioners to pay the portion of the cost of the construction and improvement of an intercounty highway, authorized by law to be charged against the benefited property.”

In the body of the opinion it was held that Section 11222, General Code, was not applicable to actions under Section 2667, General Code.

For comparison, and clarification purposes, the following is called to attention with respect to the above opinion as it relates to code sections:

(a) Former Section 11222, General Code, is now Section 2305.07, Revised Code.

(b) Former Section 2667, General Code, is now Section 323.25, Revised Code.

(c) Former Section 2670, General Code, which contained the express provision that “No statute of limitations shall apply to such action,” is now Section 323.28, Revised Code.

The existing sections are not identical with the former General Code sections, but the changes made in the wording are not of particular consequence in the consideration of your opinion request.

You have also advised that your research has included consideration of a Law Journal article and certain cases. In *Hartman v. Hunter, Treas.*, 56 Ohio St., 175 (1897), that you mention, the

court had under consideration a section of the Revised Statutes providing that "an action upon a liability created by statute, other than a forfeiture or penalty, can only be brought within six years after the cause of action accrues." In said case the section was held to apply to a county treasurer in his attempt to enforce assessments for the construction of township ditches. Shortly thereafter, this case was distinguished in *Wastenev v. Schott, Treas.*, 58 Ohio St., 410 (1898). However, no further attention need be given either case since the answer to your inquiry is controlled by the statutory provisions presently in force and effect.

Therefore it is my opinion and you are advised that Section 2305.07, Revised Code, is not a bar to a proceeding instituted to enforce a lien for unpaid street assessments pursuant to Sections 323.25 and 323.28, Revised Code.

Respectfully,

WILLIAM B. SAXBE

Attorney General