

tion for appraisers of real estate sold as on execution.

2. By virtue of the provisions of Section 3006, General Code, appraisers of real estate in a judicial sale as on execution are entitled as compensation for their services to the sum of one dollar per day.

3. Since appraisers of land in foreclosure sales are required to be appointed by the officer making the sale, Section 3006-1, General Code, grants no authority to a Court of Common Pleas to fix a higher rate of compensation therefor.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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186.

APPROVAL, BONDS OF CITY OF BEDFORD, CUYAHOGA COUNTY,  
OHIO—\$10,500.00.

COLUMBUS, OHIO, March 3, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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187.

TAX AND TAXATION—WHERE TAX COMMISSION MAKES PER-  
CENTAGE REDUCTION OF REAL ESTATE TAXES IN A COUNTY—  
HOW SUCH AFFECTS REAL ESTATE OWNED BY PUBLIC UTILI-  
TIES.

**SYLLABUS:**

*When the Tax Commission, acting under authority of Section 5613, General Code, makes an order reducing by percentage rate the assessed valuation of real property generally in a county and the taxing districts therein, such action, without further order of the Tax Commission, is effective as to such real property of a public utility, located in such county and taxing districts, as is assessed for taxation by the county auditor under the authority conferred upon him by Sections 5548 and 5548-1, General Code.*

*As to real property of a public utility, other than such real property of the utility as is assessed for taxation by the county auditor under Section 5548 or 5548-1, General Code, the Tax Commission is not authorized to make any order reducing by percentage rates the previously assessed valuation of this kind of property of public utilities generally in any tax district or districts; but in each case and as to each public utility it is the duty of the Tax Commission to assess this property of the public utility so that, as compared with the valuation of other real property in the taxing district or districts where the real property of the*

*public utility assessed by the Tax Commission is located, there will be no discrimination against the property of the utility.*

COLUMBUS, OHIO, March 4, 1933.

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

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

“The Commission desires your Opinion in the matter of the application of Public Utilities with respect to the valuation of Real Estate to be returned in annual reports of Public Utilities for the year 1933.

The question primarily is—Shall Public Utilities, in making their annual reports as of December 31, 1932, and January 1, 1933, be permitted to reduce their Land and Building assessments in their annual reports to correspond with the horizontal reductions on lands and buildings made by the various County Auditors and approved by the Tax Commission?

Commentary to the question submitted for Opinion, it must be taken into consideration that any reduction made or authorized in Real Estate values does not necessarily mean that a reduction is required in the Utilities' valuation as a whole as a going concern fixed by the Commission under the provisions of Sections 5424 and 5452 G. C.

In the last analysis, the question does not affect the valuation as a whole but pertains only to a component part of the total valuation, namely, Lands and Buildings used in operation, it being the contention of the Public Utilities that these component parts (Lands and Buildings) must be assessed in the same manner as other similar property is assessed by the local Auditors; otherwise there will be discrimination and the rule of uniformity in the matter of assessing Lands and Buildings will not be followed.

Inasmuch as Public Utilities make return to the Commission as of December 31 and January 1 yearly it is very important that the Commission decide the matter definitely at the earliest possible date in order that the annual reports may be compiled and filed in the office of the Commission on or before March 1st.”

It appears from your communication that the question therein presented arises from the fact that, since the appraisal of real property for taxation in the several counties of the state made by the county auditors thereof in the year 1931, the Tax Commission of Ohio has made or approved horizontal reductions at flat rates in the assessed valuations of taxable real property in a number of the counties of the state and in the several taxing districts thereof.

The question here presented is whether the Tax Commission is authorized and required to make a like reduction in the assessed valuation of real estate owned and used in operation by public utilities in the several counties of the state corresponding with the reductions made or approved by the Tax Commission with respect to real property generally in such counties.

Under section 5548, General Code, each county is made the unit for assessing real estate for taxation purposes. By this section, the county auditor, in addition to his other duties, is made the assessor for all the real estate in his county for purposes of taxation, subject to the proviso therein contained that this authority

conferred upon the county auditor shall not affect the power conferred upon the Tax Commission of Ohio in the matter of the valuation and assessment of the property of public utilities. By this section, it is made the duty of the county auditor to assess all the real estate in the county every six years on and after the year 1925. It was under the provisions of this section that an assessment of real estate for purposes of taxation was made in the several counties of the state by the county auditors in the year 1931. By section 5548-1, General Code, it is provided that 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, 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 that in such case he shall determine the true value of such property in money. It is further provided in such case that the county auditor shall notify the owner of such real estate or the person in whose name the same stands charged on the duplicate of his intention to re-assess such real estate and of the change in the valuation thereof in such re-assessment. A real property duplicate for purposes of taxation is made up by the county auditor every year but this is only done after the assessment of the property on such duplicate has been revised by the county board of revision under the authority conferred upon it by section 5605, General Code. After such real property duplicate has been made up and equalized by the county board of revision, the county auditor under the provisions of section 5612, General Code, is required to make out and transmit to the Tax Commission of Ohio annually an abstract of the real (and personal) property of each taxing district in the county, in which he is required to set forth the aggregate amount and classification of each class of real (and personal) property in the county and in each taxing district therein. By section 5613, General Code, it is provided that the Tax Commission of Ohio annually, after receipt of the real and personal property abstracts provided for by section 5612, General Code, shall determine whether the real and personal property, and the various classes thereof, in the several counties, cities, villages and taxing districts in the state have been assessed at the true value therein in money, and, if it finds that the real or personal property, or any class of real or personal property, in any county, city, village or taxing district in the state as reported by the several county auditors to it, is not listed at its true value in money, it may increase or decrease the aggregate value of the real property or of the personal property, or any class of real or personal property, in any county of the state or in any township, city, village or taxing district therein, by such rate percent, or by such amount as will place such property on the tax list at its true value in money. Section 5614, General Code, provides that when the Tax Commission has increased or decreased the aggregate value of the real or personal property or any class thereof, in any taxing district or subdivision thereof, it shall transmit to the county auditor a statement of the amount or rate percent to be added to or deducted from the valuation of such property, or class thereof, in the taxing district or subdivision thereof affected by the order of the Tax Commission, which order is required to specify the amount or rate percent to be added to or deducted from the valuation of the real or personal property in such district or subdivision thereof.

In a consideration of the question here presented there is no doubt but that under the provisions of sections 5548 and 5548-1, General Code, the county auditor in assessing real property in his county for purposes of taxation is authorized and required to assess real property of public utilities in the county which is not

used in operation. See Opinions of the Attorney General, 1917, pages 1054, 1055. Likewise, the real property tax list made up annually by the county auditor and equalized by the county board of revision includes all real property in the county which is owned by public utilities and which is not used in the operation of such public utilities. It follows from this that any action taken by the Tax Commission, either increasing or decreasing by percentage rates real property in any county or taxing districts therein, would, without any further order of the Tax Commission, be effective with respect to real property of public utilities not used in operation.

However, the question presented in your communication seems to assume that an order made by the Tax Commission under the authority of section 5613, General Code, reducing by percentage rates the assessed valuation of real property generally in a county and in the several taxing districts therein, would not have the effect of reducing the assessed valuation of real property owned by public utilities and used in operation. And, as above noted, the question here presented is whether the Tax Commission is authorized and required to now make an order according to real property of public utilities used in operation similar percentage reductions to correspond with such general real property reductions in the several counties and taxing districts therein where such public utility property is located and used.

A consideration of this question suggests and, perhaps, requires a consideration of a number of sections of the General Code of this state relating to the assessment of the property of public utilities for purposes of property taxation. Some of these sections relate to the assessment of the property of all public utilities other than the property of freight line companies, express companies, telegraph companies and telephone companies, the taxation of which is specially provided for, and which is not here considered. Some of these sections relate only to the assessment of the property of railroads and of suburban and interurban railroads; while other sections here noted apply to the assessment of the property of public utilities here considered other than railroads and suburban and interurban railroads.

The property, real and personal, of all of these public utilities is assessed by the Tax Commission; and, in the first instance, such assessment is made upon all of the property of the public utility as a unit and as a going concern. See section 5419, General Code. In order to enable the Tax Commission to make such assessment, section 5420, General Code, provides that each public utility, except express, telegraph and telephone companies, shall annually, on or before the first day of March, make and deliver to the Tax Commission of Ohio, in such form as the Commission may prescribe, a statement with respect to such utility's plant or plants and all property owned and operated, or both, by it wholly or in part within this state. Section 5422, General Code, makes detailed provision with respect to the information to be set out in such report. This section provides, among other things, that such statement or report shall contain

"8. A detailed statement of the real estate owned by the company in this state, where situated, and the value thereof as assessed for taxation, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise, if any such there be.

9. An inventory of the personal property, including that mentioned in section 5328-1 of the General Code, owned by the company, in this state, on the first day of the month of January in which the statement

is made, where situated, and the value thereof, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any such there be.

10. The total value of the real estate owned by the company and situated outside of this state, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any such there be.

11. The total value of the personal property owned by the company and situated outside of this state, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any such there be."

Paragraph 13 of section 5422, General Code, provides in part and so far as the same is pertinent to the question here presented as follows:

"13. In the case of street, suburban or interurban railroad companies, and railroad companies, such statements shall also give:

(a) The whole length of their lines and the length of so much of their line as is without and is within this state, including branches in and out of the state, which shall include lines and branches such companies control and use under lease or otherwise.

(b) The railway track in each county in the state, through which it runs; giving the whole number of miles of road in the county, including the track and its branches and side and second tracks, switches, and turnouts therein and the true and actual value per mile of such railway in each county, stating the valuation of main track, second or other main tracks, branches, sidings, switches and turnouts, separately.

(c) Such statement as to character, classes, number, amounts, values, locations, ownership or control and use of rolling stock, as the commission may require.

(d) The depots, station houses, section houses, freight houses, machine and repair shops and machinery therein, and all other buildings, structures and appendages connected thereto or used therewith, including tool houses, and the tools usually kept therein, together with telegraph and telephone lines owned or used, and the true and actual value of all buildings and structures, and all such machinery, tools and appendages, including such telegraph and telephone lines; and the true and actual value thereof in each county in this state in which it is located."

Paragraph 14 of this section relates to certain public utilities other than railroad companies and street, suburban or interurban railroad companies. This paragraph of the section reads as follows:

"14. In case of pipe line, gas, natural gas, waterworks and heating or cooling companies, such statement shall also show:

(a) The number of miles of pipe line owned, leased or operated within this state, the size or sizes of the pipe composing such line, and the material of which such pipe is made;

(b) If such pipe line be partly within and partly without this state, the whole number of miles thereof within this state and the whole number

of miles without this state, including all branches and connecting lines in and out of this state;

(c) The length, size and true and actual value of such pipe line in each county of this state, including in such valuation the main line, branches and connecting lines, and stating the different value of the pipe separately;

(d) Its pumping stations, machine and repair shops and machinery therein, tanks, storage tanks and all other buildings, structures and appendages connected or used therewith, including telegraph and telephone lines and wires, and the true and actual value of all such stations, shops, tanks, buildings, structures, machinery and appendages and of such telegraph and telephone lines, and the true and actual value thereof in each county in this state in which it is located; and the number and value of all tank cars, tanks, barges, boats and barrels."

Section 5424, General Code, relates to the assessment of the property of each and all of the different kinds of public utilities here under consideration. This section provides that in determining the value of the property of each such public utility to be assessed and taxed within the state, the Tax Commission shall be guided by the value of the property as determined by the information contained in the sworn statements made by the public utility to the Tax Commission in the report above referred to, and by such other evidence and rules as will enable the Commission to arrive at the true value in money of the entire property of such public utility within this state, in the proportion which the value of such property bears to the value of the entire property of such public utility. By section 5425, General Code, it is provided that the property of such public utilities to be assessed by the Tax Commission in the manner above indicated shall be all the property thereof.

After the public utility has been given an opportunity to be heard in the matter of the valuation of its property for taxation and, after the Tax Commission has made such corrections with respect to the assessment or valuation of the property of the utility as will make the valuation of such property just and equal, provision is made for the deduction from the unit value of the public utility thus determined of the value of such real property owned by the public utility as is not used in operation and which is assessed for taxation otherwise than by the Tax Commission. To this end section 5428, General Code, provides that "The Commission shall deduct from the total value of the property of each of such public utilities in this state, as assessed by it, the value of the real property owned by such public utilities, if any there be, as otherwise assessed for taxation in this state, and shall justly and equitably equalize the relative values thereof". Sections 5429 and 5430, General Code, make additional provision for the assessment and apportionment of the property of railroad companies and of street, suburban and interurban railroads. These sections read as follows:

Sec. 5429. "The commission shall ascertain all of the personal property, (excepting motor vehicles and deposits taxable at the source) road-bed, stations, power houses, poles, wires, water and wood stations, and real estate necessary to the daily running operations of the road, and property mentioned in section 5328-1 of the General Code of each railroad company and each suburban or interurban railroad company, having

any line, or road, or part thereof in this state and the undivided profits, reserved or contingent fund of the company, whether in moneys, credits, or in any manner invested, and the actual value thereof in money, and also locomotives, motors and cars not belonging to the company, but hired for its use or run under its control on its road by a sleeping car company or other company. Such rolling stock not belonging to it, but under its control, may be returned by such public utility separate from its own property, and if so returned the commission shall fix the valuation of such property separately, but must include the amount in the aggregate valuation."

Sec. 5430. "The value of such property, of each of such street, suburban and interurban railroad and railroad companies, as found and determined by the commission, excepting that mentioned in section 5328-1 of the General Code, shall be apportioned by the commission among the several counties through which the road, or any part thereof, runs, so that to each county and to each taxing district therein, shall be apportioned such part thereof as will equalize the relative value of the real estate structures and stationary personal property of such company therein, in proportion to the whole value of the real estate, structures and stationary personal property of the company in this state; and so that the rolling stock, main track, roadbed, power houses, poles, wires and supplies of the company shall be apportioned in like proportion that the length of the road in such county, bears to the entire length thereof in all the counties, and to each city, village and district or part thereof therein. Each kind of property mentioned in section 5328-1 of the General Code, which is separately taxed shall be so separately assessed according to the rules set forth in section 5388 of the General Code for such property and the aggregate amount of each such assessment shall be apportioned by the commission among the several counties in like proportion that the length of the road in each such county bears to the entire length thereof in all the counties."

Section 5445 makes provision for the apportionment in this state of the property of a railroad company or of a street, suburban or interurban railroad where a part of the road of such utility is in this state and a part thereof is in another state or states.

Section 5446, General Code, relates to the apportionment of the value of property of public utilities other than railroad companies and other than street, suburban and interurban railroads. This section, in the first two paragraphs thereof, provides as follows:

"(a) When all the property of such public utility is located within the limits of a county, the assessed value thereof, other than that mentioned in section 5328-1 of the General Code, shall be apportioned by the commission between the several taxing districts therein, in the proportion which the property located within the taxing district in question, bears to the entire value of the property of such public utility, as ascertained and valued as herein provided, so that, to each taxing district there shall be apportioned such part of the entire valuation as will fairly equalize the relative value of the property therein located, to the whole value thereof. Each kind and class of property mentioned in section

5328-1 of the General Code, which is separately taxed, shall be so separately assessed according to the rules set forth in section 5388 of the General Code for such property and the assessments thereof shall not be so apportioned.

(b) When the property of such public utility is located in more than one county in this state, the assessed value thereof, other than that mentioned in section 5328-1 of the General Code, shall be apportioned by the commission between the several counties and the taxing districts therein, in the proportion which the property located therein, bears to the entire value of the property of such public utility as ascertained and valued, as herein provided, so that to each county and each taxing district therein, there shall be apportioned such part of the entire valuation as will fairly equalize the relative value of the property therein located to the whole value thereof. Each kind and class of property mentioned in section 5328-1 of the General Code, which is separately taxed, shall be so separately assessed according to the rules set forth in section 5388 of the General Code for such property and the assessment of each such kind or class shall be apportioned by the commission between the several counties in the proportion in which the whole property of such public utility, located in each, bears to the entire value of such other property of said public utility, as so ascertained and valued."

This section further makes provision for the apportionment of the unit value of such public utility where a part of its property is located in this state and a part of the property is located in some other state or states. Section 5447, General Code, provides that, on the second Monday of July, the Tax Commission shall certify such apportionment to the auditor of each county in which any of the property of the public utility is located. And by section 5448, General Code, it is provided that the county auditor shall place the apportioned value and assessments on the proper tax lists and duplicates and that taxes shall be levied and collected thereon, in the same manner and at the same rates, as real property in the taxing district in question and other classified property in the county in question, respectively.

Upon consideration of the statutory provisions above referred to, it will be noted that, in the assessment of the property of a public utility as a unit and as a going concern in the manner required by these statutes, all of the real property of the public utility is included in such assessment whether such real property is used in connection with the daily operations of the utility, or otherwise. In this connection, it further appears that although real property of the utility not used in operation is assessed by the county auditor under the independent power and authority granted to him by sections 5548 and 5548-1, and real property of the utility used in connection with its daily operations is as a matter of practice assessed by the county auditor as the agent of the Tax Commission, and both classes of property are reported to the Tax Commission as thus assessed in the statement or report which the utility is required to file with the Tax Commission under section 5422, General Code, the Tax Commission, in determining the valuation of the utility as a whole under the unit rule, is not required to give controlling weight to the assessed valuations of these several classes of real property as reported to the Tax Commission in the statement filed with it by the utility under section 5422, General Code. The valuation placed upon the property of the utility as a whole may be determined by con-



siderations other than the assessed valuations of any of the component parts of the property of the utility.

After the property of the utility is assessed as a unit and as a going concern, the valuation thus arrived at is broken down by the deduction from the total valuation thus determined of the value of the real property of the utility not used in operation which is property "otherwise assessed for taxation" within the provisions of section 5428, General Code, providing for such deduction. In making such deduction of real property not used in operation, the Tax Commission is bound by the assessment made of this property by the county auditor and equalized by the county board of revision. The provisions of section 5548, General Code, with respect to the deduction of the value of the real property of a public utility not used in operation, apply as to all public utilities here under consideration.

Addressing our attention to the assessment and apportionment of railroad companies and of street, suburban and interurban railroads, for purposes of taxation, it will be noted from the provisions of sections 5429 and 5430, General Code, that the Tax Commission, after determining the valuation of a public utility of this kind as a unit and after deducting therefrom the assessed valuation of real property not used in operation, is required to separately ascertain the value of all real property of the utility used in operation other than main track, roadbed and power houses and to localize such real property together with stationary personal property in the taxing districts in which such property belongs and to equalize the value of the property thus localized with that of similar property of the utility in other taxing districts. It further appears from these sections that, after the Tax Commission has deducted from the unit valuation of a railroad company or of a street, suburban or interurban railroad company, the valuation thus made by the Tax Commission of real property used in operation, other than main track, roadbed and power houses (if any), and has localized such real property together with stationary personal property in the taxing districts in which such property is located, the Tax Commission is required to apportion the balance of the property of the utility and of the unit valuation thereof among the counties and the taxing districts thereof in proportion to the track mileage in such counties and taxing districts, except as to intangible property which is apportioned between the counties on a track mileage basis.

Although, as above noted, the Tax Commission may enlist the aid of local taxing authorities in obtaining an assessment of the value of the property of a railroad company or of a street, suburban or interurban railroad which is used in operation, other than that which is assessed and apportioned on a mileage basis, and the valuation of such real property thus assessed by the local taxing authorities may be set out in the statement required of such company by the provisions of section 5422, General Code, the Tax Commission in assessing such property for the purpose of localizing the same in the several counties and taxing districts where such property is located is not bound by the assessment thus made and reported to it but the Tax Commission in localizing such property is required to assess this property for taxation and to deduct its assessed valuation thereof from the unit valuation of the company. Touching this question, this office in an opinion under date of June 18, 1917, Opinions of the Attorney General, 1917, Vol. II, page 1054, held:

"A county auditor, acting under section 5548, G. C., has no authority to value the real estate of a railroad, used in its daily running opera-

tions. The Tax Commission, acting under section 5429, G. C., must assess such property. The deductions required by section 5428, G. C., as applied to railroads, include only real estate not used in operation. The Commission may enlist the aid of local taxing authorities in discharging its duty under section 5429, G. C., but it must make the final assessment."

Though the Tax Commission is authorized and required to assess the property of a railroad company, street, suburban and interurban railroad company used in operation by such utility, it has no authority to assess such property or to otherwise fix the value of the same for purposes of taxation otherwise than as a part of its proceedings in determining the unit value of a particular public utility of this kind, and in making the required deductions from such unit value before apportioning the balance of such unit valuation on a mileage basis. In other words, the Tax Commission has no power or authority to fix the valuation of this kind of real property by a blanket order affecting railroad companies, or street, suburban and interurban railroads throughout the state or in any particular county or counties thereof. In this connection, it is noted that the only authority which has been conferred upon the Tax Commission to increase or reduce by horizontal percentage rates the assessed valuation of any kind or class of either real or personal property is that given to the Tax Commission by the provisions of section 5613, General Code. The power conferred upon the Tax Commission by section 5613, General Code, can only be exercised by it upon the abstract filed with the Commission by the county auditor of some particular county, and with respect to some class or classes of property appearing on such abstract. As to this, it appears that, although real property used in operation by a railroad company, street, suburban or interurban railroad company, when the same has been assessed and localized by the Tax Commission, is upon certification by the Tax Commission placed upon the real property and public utility tax list and duplicate prepared by the county auditor under the authority of section 2583, General Code, the only kind or class of real property which appears on the abstract filed by the county auditor with the Tax Commission under section 5612, General Code, is such real property as has been assessed by the county auditor and revised by the county board of revision in the manner provided by section 5605, General Code. See *State, ex rel., vs. Morris*, 63 O. S. 496, 506. Obviously, the powers and duties of the county auditor and the county board of revision with respect to the assessment and revision of real property valuations imposed by sections 5548, 5548-1 and 5605, General Code, do not extend to the property of a railroad or other similar utility the property of which is assessed for taxation by the Tax Commission. Since real property owned and used in operation by these particular classes of public utilities is not assessed by the county auditor or revised as to value by the county board of revision, the same does not appear upon the abstract which the county auditor is required to file with the Tax Commission, and upon which the Tax Commission is authorized to increase or decrease by percentage rates any kind or class of property appearing upon such abstract. I am quite clearly of the opinion therefore that as to real property owned by railroad companies, street, suburban and interurban railroads, and used in operation by such companies, the Tax Commission of Ohio has no statutory authority to make a horizontal reduction by flat percentage rates in any county or taxing district where such property may be located for the purpose of according to such property a reduction in assessed value heretofore accorded to other real property in such

county or taxing district. Moreover, the question here presented does not seem to be whether the abstract filed by the county auditor with the Tax Commission under section 5612, General Code, is required to have entered thereon real property owned by railroads and other similar utilities and used in the operation of such utilities, or whether, upon the presentation of an abstract carrying such property, the Tax Commission is authorized to make a blanket reduction in the assessed valuation thereof in the several counties and taxing districts, as it has with respect to other real property appearing on the abstract. The question here presented is whether, independent of such abstract and of the question as to whether property of this kind is required to be entered thereon, the Tax Commission of Ohio has independent authority to now make a reduction in the assessed valuation of railroad and other similar public utility property used in operation, predicated upon the fact as a sufficient reason for such action that in the year 1932 or prior thereto the Tax Commission had made a blanket reduction in the assessed valuation of other real property in certain counties and taxing districts wherein such railroad and other public utility property was located. As previously indicated, I am of the opinion that this question should be answered in the negative.

However, it does not follow, because the Tax Commission has no statutory authority to make a blanket or horizontal reduction in the assessed valuation of property owned and used in operation by railroads and the other similar public utilities above mentioned, merely for the purpose of giving such property the benefit of a reduction previously made by the Tax Commission with respect to other property in counties and taxing districts wherein such railroad and other public utility property is located, that the fact that the Tax Commission has accorded to other real property in such counties and taxing districts a blanket reduction in the assessed valuation thereof is not a material fact in the consideration which the Tax Commission is required to give in assessing for purposes of taxation in the year 1933 the value of railroad and other similar public utility real property used in operation in such counties and taxing districts, as a part of its duty in determining the assessed valuation of such railroad or other similar utility as a unit and in its entirety. As to this, section 2 of article XII of the State Constitution, as amended, still requires real property to be assessed for taxation by uniform rule according to value; while the equal protection of the law clauses of the Fourteenth Amendment to the Federal Constitution and of section 2 of the Bill of Rights in the State Constitution operate to inhibit any arbitrary, intentional and systematic discrimination against any property owner with respect to the taxation of his property. In the case of *Sioux City Bridge Company vs. Dakota County*, 260 U. S. 441, the Supreme Court of the United States held that intentional and arbitrary assessment of the property of one owner for taxation at its true value, in accordance with the Constitution and laws of the state, while other like property is systematically assessed at a much lower valuation, is a violation of the equal protection of the laws provision of the Fourteenth Amendment, and that the owner of property thus aggrieved is entitled to have the assessment of this property reduced to the common level, since he was not in a position to compel the re-assessment of such other property at its true value in money as the law required. The court further held in this case, however, that mere errors of judgment in fixing an assessment of property for purposes of taxation will not support a claim of discrimination; but that to effect a violation of the constitutional provision, above referred to, there must be an intentional

violation of the principal of practical uniformity in the assessment of property for taxation. Touching this same question, the Supreme Court of the United States in the case of *Southern Railway Company vs. Watts*, 260 U. S. 519, 526, said:

“The rule is well settled that a taxpayer, although assessed on not more than full value, may be unlawfully discriminated against by undervaluation of the property of the same class belonging to others. *Raymond vs. Chicago Union Traction Company*, 207 U. S. 20. This may be true although the discrimination is practiced through the action of different officials. *Greene vs. Louisville and Interurban R. R. Co.*, 244 U. S. 499. But, unless it is shown that the undervaluation was intentional and systematic, unequal assessment will not be held to violate the equality clause. *Sunday Lake Iron Company vs. Wakefield*, 247 U. S. 350, 353; *Chicago, Burlington and Quincy Ry. Co. vs. Babcock*, 204 U. S. 585; *Coulter vs. Louisville and Nashville R. R. Co.*, 196 U. S. 599; *Sioux City Bridge Co. vs. Dakota County*, ante, 441.”

Among other cases on this point are: *Chicago Great Western Railway Company vs. Kendall*, 266 U. S. 94; *Cumberland Coal Company vs. Board of Revision*, 284 U. S. 23; *Connecting Gas Company vs. Imes*, 11 Fed. (2d) 191; *Paxton vs. Ohio Fuel Supply Company*, 11 Fed. (2d) 740; *City Railway Company vs. Beard*, 283 Fed. 313. However, I do not believe that the principle of constitutional law, above noted, necessarily requires the Tax Commission, in all cases where blanket reductions at percentage rates have been made in the valuation of other real property in any county or taxing district therein, to make a like reduction at the same percentage rates on railroad and other like public utility real property used in operation. Thus in the case of *Southern Railway Company vs. Watts*, *supra*, county boards of assessors in the state of North Carolina, acting under an act of the legislature of that state providing for the revaluation of real estate, made reductions in the valuation of real estate (including that belonging to railroads not used in operation) in sixty-seven counties of that state which reduction varied from 1 to 50 per cent in said several counties. In thirty-three counties of the state no reduction was made in the valuation of real estate therein. Thereafter, five railroads in the state applied to the state board having jurisdiction with respect to the assessment of the property of railroads, for a reduction of their valuations as the basis for taxation of such railroad properties. The application of one of the railroads was granted in part; but after due hearing and rehearings the state board refused to modify the assessments of the other four railroads which had theretofore been fixed. The railroad companies in this case claimed that, inasmuch as the county boards acting under the authority of said act had reduced real estate valuations quite generally, while the state board refused to reduce the valuation of any railroad, except one, they had been denied equal protection of the laws in the administration of the tax laws of that state. With respect to this contention, the Supreme Court, after noting the rule above quoted, said:

“Plaintiffs have clearly failed to establish that there was intentional and systematic undervaluation by the county boards. Strong evidence to the contrary is furnished by the fact that in thirty-three

counties, including those in which the largest cities are located, no reduction was made in the valuation of real estate and that in the remaining sixty-seven counties the reduction varied from one to fifty per cent. Plaintiffs have failed, likewise, in showing systematic refusal on the part of the state board to allow a proper reduction in the valuation of any railroad."

See also *Chicago Great Western Railway Company vs. Kendall, supra*. In other words, with respect to the matter here presented, the only requirement affecting the duties of the Tax Commission in assessing the real property of a railroad company or of a city, suburban or interurban railroad company used in operation by any such company is that, in comparison with like real property in the counties or taxing districts where such utility property is located, the same should be assessed by the Tax Commission in each case so that there will not be any arbitrary and intentional discrimination against the property of the utility. Nothing more than this can be asked in any case.

As before indicated, I am of the opinion therefore that, as to railroad companies and as to street, suburban and interurban railroads, they are not, on either statutory or constitutional grounds, entitled to a blanket reduction at stated percentage rates on the assessed valuation of their real property used in operation merely because horizontal reductions have heretofore been made in the assessed valuations of other real property, including real property of such utilities not used in operation, in certain counties and taxing districts of the state where such utilities are located or in or through which their properties extend; but that in each case the Tax Commission should so assess the real property owned and used in operation by such utility, that as compared with like property in the county or other taxing district there will be no discrimination against the property of the utility.

With respect to the assessment and the apportionment of such public utilities other than street, suburban and interurban railroads and railroad companies, as are here considered, it is to be observed that the provisions of section 5428, General Code, likewise apply, and that under the provisions of this section there is to be deducted from the unit valuation of the public utility, as determined by the Tax Commission, the value of the real property owned by the public utility as otherwise assessed for taxation in this state. Real property of public utility as "otherwise assessed for taxation" is such real property owned by the utility as is assessed for taxation by the county auditor under the provisions of sections 5548 and 5548-1, General Code. In an opinion of this office under date of February 28, 1916, Opinions of the Attorney General for the year 1916, Vol. I, page 351, and in two later opinions in this office under date of June 1917, Opinions of the Attorney General for 1917, Vol. II, pages 1047 and 1054, it was quite clearly held that, with respect to public utilities other than street, suburban and interurban railroads and railroad companies, all real property owned by such public utilities comes under the category of real property "otherwise assessed for taxation" as these terms are used in section 5428, General Code, whether such real property is used in operation or not, and that under the provisions of this section the assessed value of all such real property is to be deducted by the Tax Commission from the unit valuation of the public utility. In this view the real property of a public utility of this kind used in operation, as well as that not so used, would, as real property which is assessed for taxation by the county auditor, be accorded the benefit of any horizontal

reduction that had theretofore been made by the Tax Commission, as to real property generally in the taxing districts where the property of the utility is located.

However, no question is made in your communication with respect to the correctness of the former opinions of this office, above referred to, in their application to the assessment of real property owned and used in operation by a public utility of this kind, or as to the practice of the Tax Commission with respect to the assessment of such property. And in this situation, I can only say with respect to the question presented in your communication in its application to the assessment by the Tax Commission of the real property of a public utility of this kind, other than such real property of the utility as is assessed for taxation by the county auditor, that, as to such real property, the Tax Commission is not authorized to make any order reducing by percentage rates the assessed valuation of this kind of property of public utilities generally in any taxing district or districts, but that in each case and as to each public utility of this kind, it is the duty of the Tax Commission to assess this property of the public utility so that, as compared with the valuation of other real property in the taxing district or districts where the real property or the public utility assessed by the Tax Commission is located, there will be no discrimination against the property of the utility.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

188.

APPROVAL, NOTES OF HUDSON TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$8,000.00.

COLUMBUS, OHIO, March 4, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

189.

APPROVAL, NOTES OF UPPER ARLINGTON VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, March 6, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*