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METROPOLITAN HOUSING AUTHORITY:

1. COUNTY AUDITOR HAS NO AUTHORITY TO AGREE TO, COUNTY TREASURER NO AUTHORITY TO ACCEPT SERVICE CHARGES IN LIEU OF TAXES ON REAL PROPERTY OWNED BY HOUSING AUTHORITY — SECTION 1078-29 ET SEQ., G. C.
2. NO AUTHORITY TO AGREE TO PAY SUMS IN LIEU OF TAXES ON REAL PROPERTY IT OWNS.
3. REAL PROPERTY OWNED BY HOUSING AUTHORITY MUST BE VALUED AND ASSESSED BY COUNTY AUDITOR IN SAME MANNER AS ALL OTHER TAXABLE PROPERTY IN COUNTY—SECTION 1078-29 ET SEQ., G. C.
4. REAL PROPERTY OWNED BY UNITED STATES HOUSING AUTHORITY NOT SUBJECT TO TAXATION BY STATE OF OHIO OR ITS POLITICAL SUBDIVISIONS.

## SYLLABUS:

1. A county auditor has no authority to agree to, nor has a county treasurer authority to accept, service charges in lieu of taxes on real property owned by a metropolitan housing authority organized and existing under the provisions of Section 1078-29 et seq., General Code.

2. Such a housing authority has no authority to agree to pay sums in lieu of taxes on real property owned by it.

3. Real property owned by a metropolitan housing authority organized and existing under the provisions of Section 1078-29 et seq., General Code, must be valued and assessed by the county auditor in the same manner as all other taxable property in the county.

4. Real property owned by the United States Housing Authority is not subject to taxation by the state of Ohio or its political subdivisions.

Columbus, Ohio, January 30, 1948

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, which request is as follows:

“The Cincinnati Metropolitan Housing Authority proposes to pay to Hamilton County, a service charge on veteran temporary dwelling accommodations. This charge is to be based on an average value per unit of \$1600.00 times the tax rate in the district in which these units are located. \* \* \*

“The Ohio Supreme Court held in the Columbus Case that real estate owned by Metropolitan Housing Authorities is subject to taxation, (140 O. S.—38). In view of the above facts, your examiner is requesting an answer to the following question:

“Can a Metropolitan Housing Authority agree to, and make payments to the County Treasurer, of service charges in lieu of taxes, on buildings to which title is vested in the Housing Authority?”

Section 5322, General Code, defining real property provides in part as follows:

“The terms ‘real property’ and ‘land’ as so used, include not only land itself, \* \* \* but also, unless otherwise specified, all buildings, structures, improvements, and fixtures of whatever kind thereon, \* \* \*”

Section 5328, General Code, provides for the taxation of real property in the following terms :

“All real property in this state shall be subject to taxation, except only such as may be expressly exempted therefrom. \* \* \* All property mentioned in this section shall be entered on the general tax list and duplicate of taxable property as prescribed in this title.”

The duties of the county auditor in relation to the valuation of real property and the assessing and listing of taxes thereon are set out in the following sections of the General Code.

Section 5548, General Code :

“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 purposes of taxation, \* \* \*”

Section 5554, General Code :

“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. He shall note in his plat book, separately, the value of all dwelling houses, mills and other buildings, which exceed one hundred dollars in value, on any tract or plat of land not incorporated, or on any land or lot of land included in a municipal corporation, which shall be carried out as a part of the value of such tract. \* \* \*”

Section 5579, General Code :

“In addition to all other powers and duties vested in or imposed upon it by law, the tax commission of Ohio shall direct and supervise the assessment for taxation of all real property in the state. County auditors shall, under the direction and supervision of the tax commission of Ohio, be the chief assessing officers of their respective counties, and, shall list and value real property for taxation, within and for their respective counties, except as may be otherwise provided by law. \* \* \*”

Section 2583, General Code :

“On or before the first Monday of August annually, the county auditor shall compile and make up, in tabular form and alphabetical order, separate lists of the names of the several per-

sons, companies, firms, partnerships, associations and corporations in whose names real property has been listed in each township, city, village, special district, or separate school district or part of either in his county, placing separately, in appropriate columns opposite each name, the description of each tract, lot or parcel of real estate, the value of each tract, lot or parcel and the value of the improvements thereon, if any, \* \* \* Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the county auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commission of Ohio, and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the county auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year. \* \* \*

Another provision pertinent to your inquiry is set out in Section 2655, General Code, as follows :

“No person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate, except only when the collection of a particular tax is legally enjoined. \* \* \*

From the reference in your request to the case of Housing Authority v. Thatcher, 140 O. S. 38, and from its name I assume that the Cincinnati Metropolitan Housing Authority is a body organized and existing under the Housing Authority Law, Section 1078-29 et seq., General Code. As you pointed out the Supreme Court of Ohio has held that real estate held by such an authority is subject to taxation.

Since the property in question is subject to taxation, it seems clear from the foregoing statutory provisions that it is the duty of the county auditor to determine the true value of such property, to assess it for taxation, and to enter such taxes on the appropriate lists and certify them to the treasurer for collection.

It is the duty of the owner of such property to pay the taxes so assessed, and he is not permitted to pay less than the full amount of such taxes.

Any deviation from this procedure can be made only in accordance with law, and I am unable to find any statutes authorizing either the auditor or the taxpayer so to deviate when the property assessed is held

in the name of a metropolitan housing authority existing under the provisions of Section 1078-29 et seq., General Code.

There is another aspect of this problem which is not specifically mentioned in your request, but which may be involved in the facts which you have set out. It was held by the Supreme Court of the United States in the case of Federal Public Housing Authority v. Guckenberger, 323 U. S. 329; 89 L. Ed. 274, that property owned by the United States Housing Authority is not subject to taxation by the states or their political subdivisions. Following the decision in that case, and in view of the case of Housing Authority v. Thatcher, supra, many of the metropolitan housing authorities transferred title to their property to the United States Housing Authority and are now using it under a lease arrangement with that Authority. Such property is not subject to taxation by the state of Ohio or its political subdivisions, but Congress has provided for the payment of sums in lieu of taxes on property so held. United States Code, Title 42, Sec. 1413 (c) provides in part as follows:

“The Authority may enter into agreements to pay annual sums in lieu of taxes to any state or political subdivision thereof with respect to any real property owned by the Authority. \* \* \*”

From the form of your request it seems probable that you had in mind the above statutory provision relating to property owned by the United States Housing Authority. There is no similar provision in the Ohio Housing Authority Law (Sec. 1078-29 et seq., General Code), and consequently no such agreements can be made between the state or its political subdivisions and housing authorities organized and existing under that law.

In specific answer to your question it is therefore my opinion that:

1. A county auditor has no authority to agree to, nor has a county treasurer authority to accept, service charges in lieu of taxes on real property owned by a metropolitan housing authority organized and existing under the provisions of Section 1078-29 et seq., General Code.
2. Such a housing authority has no authority to agree to pay sums in lieu of taxes on real property owned by it.
3. Real property owned by a metropolitan housing authority organized and existing under the provisions of Section 1078-29 et seq., General

Code, must be valued and assessed by the county auditor in the same manner as all other taxable property in the county.

4. Real property owned by the United States Housing Authority is not subject to taxation by the state of Ohio or its political subdivisions.

Respectfully,

HUGH S. JENKINS,  
Attorney General.