

You do not state when the auditor delivered the delinquent list to the treasurer and of course, in the absence of such information, I am unable to say whether or not the sixty days in question expired prior to October 26, 1936, the effective date of Amended Section 5704, General Code. I do know from your communication that these delinquencies were returned at the August settlement in 1936 and I am at a loss to know how you can even maintain an action to foreclose such tax liens, even at this time in the face of Section 5717, General Code, in effect in 1936, which provides:

“No proceedings under this chapter shall be instituted on delinquent lands, unless the taxes, assessments, penalties and interest have not been paid for three consecutive years after such lands have been certified as delinquent.”

The prosecuting attorney upon whom devolves the duty of bringing the action to foreclose has no subject matter to work on until the county auditor furnishes him the certificate provided for in Section 5718, General Code, which the auditor is not authorized to make until the expiration of three years after the delinquent list has been certified by the county auditor to the county treasurer. Upon receipt of the delinquency certificate, the prosecutor is required by Section 5718-3, General Code, to institute proceedings to foreclose the tax lien within nine months thereafter. This may not be a mandatory statute. It may not, when tested, be construed as a limitation, but the only safe course for the prosecutor to pursue is to regard it as both.

It will be necessary for you to wait the statutory length of time before instituting your action to foreclose and you must follow Section 5704, General Code, strictly.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

440.

STATE BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS AND SURVEYORS — APPROPRIATION — REPEALED BY HOUSE BILL No. 33.

SYLLABUS:

Appropriation of moneys for the uses and purposes of the State Board of Registration for Professional Engineers and Surveyors con-

tained in Section 1083-9, General Code, as amended by the 91st General Assembly, is repealed by the partial appropriation act, House Bill No. 33, providing detailed itemized appropriations for such board.

COLUMBUS, OHIO, April 12, 1937.

*State Board of Registration for Professional Engineers and Surveyors,
Columbus, Ohio.*

GENTLEMEN: Your letter of recent date is as follows:

"The State Board of Registration for Professional Engineers and Surveyors is desirous of securing from your department an opinion relative to the proper disbursement of funds necessary for proper discharge of the duties of the Board.

The Engineers Registration Act as passed by the 90th General Assembly and Section 1083-9 specifically relates to the method of disbursing all moneys received and mentions the officials having to do with such disbursements.

This section of the Act was further amended in the 91st General Assembly. It clearly indicates that the intention of the legislature was to specifically set aside all moneys collected by the Board and specifically appropriated for their exclusive use.

The Board is of the opinion that these funds are not subject to any jurisdiction whatever by the Director of Finance and not subject to specific biennial appropriations by the legislature.

The Board is desirous of securing from your department an opinion as to the correct interpretation of Section 1083-9."

Section 1083-9, General Code, as last amended by the 91st General Assembly, effective August 14, 1935, provides in so far as is pertinent to your inquiry as follows:

"The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall keep such moneys in a separate fund to be known as the 'professional engineers' fund'. Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrant of the state auditor upon the state treasurer, upon itemized vouchers, approved by the chairman and attested by the secretary of the board. All moneys in the 'professional engineers' fund' are hereby specifically appropriated for the use of the board * * * *."

There is little doubt but that the language of the foregoing section constitutes a specific appropriation for the uses of your board of all moneys in the "professional engineers' fund" established in the office of the Treasurer of State and such appropriation, in the absence of any act to the contrary, would be in full force and effect for a period of two years from August 14, 1935; this in view of the provisions of Article II, Section 22 of the Constitution which provides that "No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

It became necessary to consider House Bill No. 33, being the partial appropriation act of the 92nd General Assembly, passed January 13 and approved by the Governor on January 14 of this year. This act on page 81, contains itemized, detailed appropriations to your board in the amount of \$6,692, which moneys are appropriated out of the professional engineers' fund referred to in Section 1083-9, supra. Section 1 of such House Bill No. 33 clearly covers this point, wherein it is provided inter alia as follows:

" * * * Appropriations for departments, institutions, offices and other agencies and bodies, for the uses and purposes of which, or of any activity or function thereof, specific funds in the state treasury are provided by law, are hereby made from such specific funds, insofar as such specific funds are subject by law to appropriation and expenditure for the purposes herein mentioned, and to the extent that the moneys to the credit of such specific funds on the day when this act shall take effect, or which may be credited thereto during the period covered by this act, shall be sufficient to satisfy such appropriations. * * *"

It is apparent that the act of the 91st General Assembly appropriating for the uses of your board all moneys in the professional engineers' fund as set forth in Section 1083-9, supra, is entirely inconsistent with the act of the 92nd General Assembly, which expressly itemizes and limits the moneys appropriated for the purposes of your board. Effect may not be given to both acts and under these circumstances, the conclusion is inescapable that in so far as Section 1083-9, supra, appropriates all moneys in the professional engineers' fund for the uses and purposes of your board, to the extent such section is repealed by implication by House Bill No. 33 of the 92nd General Assembly. *State, ex rel. Attorney General vs. Morris*, 63 O. S. 496; 59 N. E. 226; *Goff vs. Gates*, 87 O. S. 142, 100 N. E. 329.

You inquire as to whether or not your board is subject to any jurisdiction whatsoever by the Director of Finance. As to this, your attention is directed to the provisions of Section 154-28, General Code, which section defines the powers of the Department of Finance administered by the Director. The language is in part as follows:

“The department of finance shall have power to exercise control over the financial transactions of all departments, offices and institutions, excepting the judicial and legislative departments, * * *.”

In view of the foregoing section, there is no doubt but that your board is in the same category in so far as the Department of Finance is concerned as other state departments or boards.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

441.

PROBATE COURT—LEGAL ADVERTISING OR PRINTER'S FEES—NOT COSTS SUBJECT TO MINIMUM OF \$10.00—SECTION 10501-42, SUBSECTION 48 GENERAL CODE — ESTATES UNDER \$500.00.

SYLLABUS:

Costs of legal advertising or printer's fees for the publication of notice of appointment and other notices necessary to be made or published in the Probate Court, are not such costs as referred to in subsection 48 of Section 10501-42, General Code, and are properly chargeable by the Probate Judge in addition to the \$10.00 minimum fee in estates not exceeding \$500.00 in total value.

COLUMBUS, OHIO, April 12, 1937.

HON. ROBERT C. CARPENTER, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR: I am in receipt of your recent letter which reads as follows:

“Article 48 of Ohio General Code, Section 10501-42 limits the total fees of the Probate Judge chargeable against an estate, the assets of which do not exceed \$500.00 in value, to \$10.00.