

later decision held the law unconstitutional, yet the fact remains that the last opinion of the Supreme Court is that announced in 98 O. S. 446, affirming the constitutionality of the act.

Specifically answering your question you are advised that you are without authority to require the charging back at November elections in even-numbered years of the costs of printing the ballots against the city or political division in which such election was held upon a special question, but that the same are required to be paid out of the county treasury as other proper and necessary expenses of a general and special election.

Respectfully,
EDWARD C. TURNER,
Attorney General.

626.

APPROVAL. FINAL RESOLUTION ON ROAD IMPROVEMENT ON
LOUDONVILLE LEXINGTON ROAD, ASHLAND COUNTY.

COLUMBUS, OHIO, June 16, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

627.

PROSECUTING ATTORNEY—IS LEGAL ADVISER TO THE COUNTY
TREASURER—MUST PROSECUTE ALL ACTIONS WHICH THE
COUNTY TREASURER MAY DIRECT OR TO WHICH HE IS A
PARTY.

SYLLABUS:

1. *By virtue of the provisions of Section 2917, General Code, the prosecuting attorney is the legal adviser of the county treasurer, and it is the duty of the prosecuting attorney to represent the county treasurer and to prosecute all suits and actions, which the county treasurer may direct or to which he is a party, including suits and actions for the collection of personal taxes.*

2. *By the express terms of Section 2917, General Code, no counsel or attorney other than the prosecuting attorney may be employed to represent the county treasurer, unless such employment be authorized by the common pleas court, upon the application of the prosecuting attorney and county commissioners, as provided in Section 2412, General Code.*

COLUMBUS, OHIO, June 16, 1927.

HON. GEORGE A. MEEKISON, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date reading as follows:

"Is the Prosecuting Attorney of any county obliged by law on request of the county treasurer to maintain actions in the justice of the peace courts and common pleas courts to collect delinquent personal taxes?"

Provisions are contained in various sections of the General Code, by which county treasurers are authorized and directed to collect, by any of the means provided by law, delinquent personal taxes as such taxes appear on the tax duplicate delivered to the treasurer by the county auditor.

Section 5694, General Code, provides:

"Immediately after each semi-annual settlement in August, the county auditor shall make a tax-list, and duplicate thereof, of all the taxes on personal property remaining unpaid, as shown by the treasurer's books, and the delinquent record as returned by him to the auditor. Such tax list and duplicate shall contain the name, valuation, and amount of personal property taxes, with ten per cent penalty thereon, due and unpaid. He shall deliver the duplicate to the treasurer on the fifteenth day of September, annually."

Section 5695, General Code, reads:

"The county treasurer shall forthwith collect the taxes and penalty on the duplicate by any of the means provided by law, and the funds so collected shall be distributed in proper proportions to the appropriate funds."

If the treasurer fails to collect the delinquent personal taxes by the means provided by law, it is provided by Section 5697, General Code, that:

"When personal taxes stand charged against a person, and are not paid within the time prescribed by law for the payment of such taxes, the treasurer of such county, in addition to any other remedy provided by law for the collection of personal taxes, shall enforce the collection thereof by a civil action in the name of such treasurer against such person for the recovery of such unpaid taxes. It shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his bill of particulars or petition that the taxes stand charged upon the duplicate of the county against such person, that they are due and unpaid, and that such person is indebted in the amount appearing to be due on the duplicate, and the treasurer need not set forth any other or further special matter relating thereto. The tax duplicate shall be prima facie evidence on the trial of the action, of the amount and validity of the taxes appearing due and unpaid thereon, and of the non-payment thereof, without setting forth in his petition any other or further special matter relating thereto."

In connection with the above section, Section 5698 provides:

"On the trial of the action provided in the next preceding section, if it is found, that such person is indebted, judgment shall be rendered in favor of the treasurer prosecuting the action as in other cases. The judgment debtor shall not be entitled to the benefit of the laws for stay of execution or exemption of homestead, or other property, from levy or sale on execution in the enforcement of such judgment."

There are other statutes making provision for the collection of delinquent personal taxes. Section 2658, General Code, provides another method for the collection of delinquent personal taxes by the county treasurer by distress. This section reads:

“When taxes are past due and unpaid, the county treasurer may distress sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the taxes so remaining due and the costs that have accrued. He shall immediately advertise in three public places in the township where the property was taken the time and the place it will be sold. If the taxes and costs accrued thereon are not paid before the day appointed for such sale, which shall be not less than ten days after the taking of the property, the treasurer shall sell it at public vendue or so much thereof as will pay such taxes and the costs.”

There are kindred sections in addition to the statutes above quoted, viz., Sections 2660 and 2662 to 2665, inclusive, General Code, which provide that if the county treasurer is unable to collect by distress taxes assessed upon a person, corporation, receiver, executor, administrator, guardian and other accounting officers, agent or factor, he shall apply to the common pleas court of his county at any time after the semi-annual settlement provided by law, for an order requiring any such person or officer to forthwith, show cause why he should not pay such taxes. If any such person fails to show sufficient cause, the common pleas court is authorized to enter a rule against him for such payment and the costs of the proceedings, which shall have the same force and effect as a judgment at law and be enforced by attachment or execution or such other process as the court may direct. If the return of the delinquent list to the county auditor shows that a delinquent taxpayer has removed to another state or to another county of this state, the treasurer is authorized to collect by attachment the delinquent personal taxes of such persons who have removed from the county or state, leaving property in this state.

It is manifest from the various statutes above quoted and referred to that ample legal procedure is provided to collect the delinquent personal taxes and that the procedure is such as would require the services of an attorney. The legislature of Ohio has properly made provision for the county treasurer to request the services of the prosecuting attorney of his county to aid him in the execution and performance of his work in this respect.

Section 2917, General Code, provides in part:

“The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in Section twenty-four hundred and twelve.
* * * ”

Section 2412, General Code, referred to in Section 2917, supra, reads as follows:

“If it deems it for the best interests of the county, the common pleas court, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board of county commissioners, to employ legal counsel temporarily to assist the prosecuting attorney, the

board of county commissioners or any other county board or officer, in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such county board or officer is a party or has an interest, in its official capacity."

While Section 5696, General Code, authorizes the employment of collectors of delinquent taxes on personal property, when employing such collectors the terms of this section must be strictly complied with. See *Commissioners vs. Arnold*, 65 O. S. 479, and *Brady vs. French*, 6 O. N. P. 122. Moreover, this section only permits the employment of collectors and does not authorize the employment of one, whose services are required in a legal capacity. In an opinion of this department, dated May 24, 1921, and reported in Opinions, Attorney General, 1921, page 419, it was held as follows:

"1. Ample authority of law is conferred upon county treasurers for the collection of delinquent personal taxes, by the provisions of Sections 5694, 5695, 2658, 5697 and 5698 of the General Code, and in the prosecution of suits for the collection of said taxes, it is the duty of the prosecuting attorney to render legal advice to such treasurer, when so requested.

2. There is no authority of law for the employment of persons to bring suit for the collection of delinquent personal taxes and the authority of the county treasurer in this regard may not be delegated to others.

3. Under the provisions of Section 5696 G. C. collectors whose services are not required in a legal capacity may be employed by the county treasurers to assist in the collection of delinquent personal taxes."

In the opinion it was said as follows:

"In connection with your inquiry as to the duties of the prosecuting attorney in cases relative to the collection of delinquent personal taxes by the county treasurer, Section 2917 G. C., provides as follows:

'The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in Section twenty-four hundred and twelve. He shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund.'

The duties of the prosecuting attorney are clearly stated and defined by the provisions of this section. It is plainly his duty to furnish legal advice and assistance to the various county officers, when requested by them in their official capacity to do so. It is obviously his duty to prosecute and defend all suits and actions which such officers may direct officially and which pertain to the interest of the county.

It would seem conclusive, therefore that in suits or actions instituted by the county treasurer for the collection of delinquent personal taxes, the prosecuting attorney, if necessity requires it, would be obliged to furnish legal advice and assistance in the prosecution of such cases."

For the foregoing reasons it is my opinion that:

1. By virtue of the provisions of Section 2917, General Code, the prosecuting attorney is the legal adviser of the county treasurer, and it is the duty of the prosecuting attorney to represent the county treasurer and to prosecute all suits and actions, which the county treasurer may direct or to which he is a party, including suits and actions for the collection of personal taxes.

2. By the express terms of Section 2917, General Code, no counsel or attorney other than the prosecuting attorney may be employed to represent the county treasurer, unless such employment be authorized by the common pleas court, upon the application of the prosecuting attorney and county commissioners, as provided in Section 2412, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

628.

DISAPPROVAL, ABSTRACT OF TITLE TO "GUILFORD LAKE PARK"
LAND, HANOVER TOWNSHIP, COLUMBIANA COUNTY, OHIO.

COLUMBUS, OHIO, June 16, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—YOU have submitted for my opinion an abstract of title prepared by McMillan & Kelso, Abstracters at Lisbon, Ohio, certified under date of May 23, 1927, covering land known as Tract No. 3, Guilford Lake Park, containing 8.63 acres of land, situate in the Township of Hanover, County of Columbiana and State of Ohio, and being a part of a larger tract of land owned by William D. Coy, described as follows:

Being part of the northwest quarter of Section 11, Township 15 and Range 4, beginning at a stone planted at the northwest corner of said quarter section and running thence with the north line of the same east 31 chains and 81 links to a corner; thence south 20 chains and 45 links to a corner and stone in State road; thence north 75° west 1 chain and 76 links to a post in said road; thence south 15° west 4 chains and 11 links to a post; thence north 80° and 40' west 6 chains and 26 links to a post; thence north 5° east 5 chains and 44 links to a post in said State Road; thence with said road north 75° west 6 chains 89 links to a post; thence north 86° west 10 chains and 45 links to a post on the west line of said section; thence with the same north 16 chains and 89 links to the place of beginning and containing 58.49 acres more or less.

Upon examination of the submitted abstract I am of the opinion that the same shows a good and merchantable title to the 58.49 acres, from which the 8.63 acres, known as Tract No. 3, is to be purchased, in William D. Coy, subject to the following:

1. An uncancelled oil and gas lease executed January 4, 1910, by William D. Coy to Fred Worthington for the term of two and one-half years. and so much