1203.

DELINQUENT WATER RENTALS—CITIES CAN NOT CERTIFY TO COUNTY AUDITOR FOR COLLECTION AS OTHER TAXES—VILLAGES CAN.

SYLLABUS:

1. *There is no authority for the certification of delinquent water rentals to the county auditor by a city. Neither is there any authority for the county auditor placing such certification upon the tax duplicate for collection.*

2. *By reason of the express provisions of Section 4361, of the General Code, the board of public affairs of a village may legally certify to the county auditor the delinquent water rentals. Upon such certification, the county auditor is required to place the same upon the tax duplicate for collection.*

COLUMBUS, OHIO, November 16, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This acknowledges receipt of your recent communication which reads:

> "Section 3958 G. C. reads:
>
> "For the purpose of paying the expenses of conducting and managing the water works, such director may assess and collect from time to time a water rent of sufficient amount in such manner as he deems most equitable upon all tenements and premises supplied with water. When more than one tenant or water taker is supplied with one hydrant or off the same pipe, and when the assessments therefor are not paid when due, the director shall look directly to the owner of the property for so much of the water rent thereof as remains unpaid, which shall be collected in the same manner as other city taxes.'
>
> The pertinent part of Section 4361, G. C., relating to water rents in villages reads:
>
> 'When such rents are not paid, such trustees may certify the same over to the auditor of the county in which such building is located, to be placed on the duplicate and collected as other village taxes or may collect the same by action at law in the name of the village.'
>
> The third branch of the syllabus of Opinion No. 357, p. 243, Attorney General's Opinions for the year 1912, reads:
>
> 'Such rentals are in no sense a tax and there is no authority to certify such rents to the auditor for collection.'
>
> Question 1. May delinquent water rents, which are made a lien on the property by rule of the Director of Public Service in the city, be legally certified to the County Auditor for collection as other city taxes are collected?
>
> Question 2. May delinquent water rents which are made a lien on the property by rule of the Board of Public Affairs of a village be legally certified to the County Auditor for collection as other village taxes are collected?

The opinion of the Attorney General to which you refer was apparently well considered. The conclusion therein reached is based upon a New York case which held that water rent is not in its inception either a tax or an assessment. So far

as it has come to my attention, the rule thus announced by the Attorney General in construing Section 3958 of the General Code, has not been changed either by his successors or by the courts.

It may be stated as a basic proposition that laws levying and collecting taxes are construed strictly in favor of the taxpayer. Unusual methods of enforcing the collection of a tax would likewise be in the same category as a law levying the tax. While the phrase "which shall be collected in the same manner as other city taxes" could, by implication, probably be said to include certifying and placing the same upon the tax duplicate, yet the rules hereinbefore announced would seem to be opposed to such a procedure. The Attorney General in the opinion to which you refer, regarded water rents as being a contractual obligation and not a tax or an assessment.

The Supreme Court of Ohio, in the case of *Steel Co.* vs. *Cuyahoga Heights,* 118 O. S., 544, in its opinion had occasion to refer to Sections 3958 and 4361, General Code, and while not dealing with the specific question which you present, the following pertinent comment was made:

> "We are cited to Sections 3957, 3958, and 4361, General Code, and are asked to find from those sections the existence of a statutory lien upon the premises at the time the water rent accrued and while owned by the Hunter Crucible Steel Company. These sections empower the director of public service or the board of trustees of public affairs to assess water rents against the property upon which water has been furnished and to collect such assessment in the same manner as other city taxes. They have application to municipalities owning and operating municipal water plants and confer unusual and exclusively statutory power upon certain designated officials. The power so conferred has no common-law basis, nor does it grow out of any inherent municipal power. They create in the municipality a power, which, but for the existence of the statute, it would not have, and a liability upon property, which, but for the existence of the statute, would not obtain. They will therefore be construed strictly and will not include any property or any situation which does not fall within the exact terms of the statute."

The above case is authority for the fact that a strict construction must be applied to the statutes under consideration. The ruling of the Attorney General to which you refer undoubtedly has been followed since the time of its pronouncement. There are many decisionns to the effect that administrative interpretations of a statute, if acquiesced in for a long period of time, will be given great weight.

In view of the foregoing, I would be reluctant to undertake to reverse said opinion. In fact, I am inclined to the belief that the opinion rendered was sound.

In passing, it should be noted that Section 3958, General Code, hereinbefore referred to, which refers to the collection of the water rent in the same manner as other city taxes, in the use of such language has reference to the situation which is set forth in the second sentence of said section. In other words, the manner of collection, above mentioned, has reference to a situation wherein more than one tenant or water taker is supplied with one hydrant or from the same pipe and the assessment for such service is not paid when due.

From the foregoing, it will be observed that Section 3958, General Code, is not of general application in so far as the method of collection in the manner of "other city taxes" is concerned. In other words, there are no provisions for the collection in the manner provided for other city taxes except in those cases

wherein more than one tenant or water taker is supplied with one hydrant, etc., as mentioned in said section. It therefore would seem rather absurd that the Legislature would contemplate the certification in the one instance and not make such requirement in others, which is another argument for my conclusion above stated.

While the foregoing is dispositive of your first inquiry, an entirely different situation exists with reference to a board of public affairs operating under the provisions of Section 4361, General Code. This section expressly authorizes the trustees to make such by-laws and regulations as it may deem necessary for the management of the waterworks when such regulations are not repugnant to the ordinances of the municipality or the constitution or laws of the state. The section further expressly authorizes such trustees in the management of waterworks to assess a water rent of sufficient amount "in such manner as they deem most equitable upon all tenements and premises supplied with water", and "when such rents are not paid, such trustees may certify the same to the auditor of the county in which such village is located, to be placed on the duplicate and collected as other village taxes or may collect the same by an action at law in the name of the village." Clearly, the latter section authorizes in express and unambiguous language the certification and placing of such assessments upon the duplicate. It will further be noted that this section is general in its application in so far as the certification and collection is concerned thereby applying to all delinquent unpaid assessments.

In view of the foregoing, and in specific answer to your inquiries, I am of the opinion that:

1. There is no authority which authorizes the certification of delinquent water rentals to the county auditor by a city. Neither is there any authority authorizing the county auditor to place such certification upon the tax duplicate for collection.

2. By reason of the express provisions of Section 4361 of the General Code, the board of public affairs of a village may legally certify to the county auditor the delinquent water rentals. Upon such certification, the county auditor is required to place the same upon the tax duplicate for collection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1204.

STATE OFFICE BUILDING—RIGHT OF CITY OF COLUMBUS TO DONATE RIVER FRONT TO STATE FOR SUCH BUILDING, DISCUSSED.

SYLLABUS:

Should the river front site be selected for the state office building, the City of Columbus may lawfully convey the property necessary therefor in view of the fact that the incidental benefits accruing to the city, as distinguished from the state, by reason of such conveyance, constitute adequate value therefor.

COLUMBUS, OHIO, November 18, 1929.

HON. CHARLES D. SIMERAL, *Executive Secretary, The Ohio State Office Building Commission, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication in which you state that the State Office Building Commission is considering among others, what is known as the river site, and you inquire whether the city has the right to give to the State property