

relative to this issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of May 22, 1934, being Opinion No. 2710.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

697.

APPROVAL—BONDS OF CITY OF TOLEDO, LUCAS COUNTY,
OHIO, \$5,000.00.

COLUMBUS, OHIO, June 4, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of City of Toledo, Lucas County, Ohio, \$5,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated September 1, 1928. The transcript relative to this issue was approved by this office in an opinion rendered to your commission under date of May 29, 1935, being Opinion No. 4301.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

698.

AUTHORITY OF TAX COMMISSION TO ACT ON APPEALS
AND INVESTIGATE—COMPLIANCE WITH SECTIONS
5610 and 5611, GENERAL CODE—COUNTY BOARD OF RE-
VISION DISMISSAL—APPEAL TO COMMISSION, WHEN.

SYLLABUS:

1. *The Tax Commission of Ohio, has the authority to act on appeals and to make such investigation and take such further action on the same*

as may be necessary to comply with the provisions of Sections 5610 and 5611 of the General Code.

2. *The action of the County Board of Revision in dismissing complaints filed by complainants for a decrease in the valuation of property appearing on the tax duplicate for the then current year, which complaints were filed under authority of Sections 5609 and 5610, General Code, constitutes a final order from which an appeal to the Tax Commission of Ohio may be perfected.*

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COLUMBUS, OHIO, June 4, 1937.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: Your letter of recent date reads as follows:

"The Tax Commission of Ohio desires your interpretation of Sections 5609-10-11, General Code, with respect to the procedure to be taken in real estate complaints appealed from the Board of Revision to the Tax Commission, under the following statement of facts:

First: Complaints were duly filed with the Board of Revision, requesting a decrease in the valuation of certain properties for the year 1935. A printed notation appeared on each of the complaints, stating that full information in support thereof would be filed within thirty days, no pertinent facts being given in the complaints, all the blank spaces on said complaints being left blank.

Complainants were later notified by the Board of Revision to furnish within a stipulated time the information requested on the complaint forms, and were informed that without such information the Board of Revision would be compelled to reject said complaints.

No information was ever furnished by the complainants pertaining to these complaints and no evidence was ever presented to the Board of Revision, no hearing was had by the Board of Revision on same and the Board denied and dismissed each of the complaints and so notified the complainants.

Second: Complaints were filed on May 2nd, 1936, with the Board of Revision, requesting a decrease in the valuation of certain properties for the year 1933. A printed notation appeared on each of the complaints stating that full information in support thereof would be filed within thirty days. No pertinent

facts were given in said complaint, all the blank spaces on said complaint forms being left blank.

Said facts were not furnished within the 30 day period; and on June 1st, 1936, at the request of the complainants, the Board of Revision granted an extension of time, to wit: to July 1st, to furnish the information required. Later, on June 10th, 1936, before the expiration of the period granted as aforesaid, the Board considered the complaints, and disallowed same, although no date for hearing had been set in said cases.

The apparent mistake was called to the attention of the Board by the attorney for complainants, but was informed that once the statutory notice disallowing said complaints had been issued, it could not be recalled, and it would therefore be imperative to file the statutory appeal to the Tax Commission within thirty days thereafter.

"Appeals were made to the Tax Commission and to the County Auditor and later transcripts of the entire proceedings before the Board of Revision were filed with the Tax Commission of Ohio, in both of the foregoing instances, said transcripts showing that the proceedings before the Board of Revision were as above enumerated. A full transcript of the proceedings is hereto attached.

"The Prosecuting Attorney, for and on behalf of the Board of Revision of Cuyahoga County, contends that the Tax Commission has no jurisdiction in the matter, and sets forth said contention in a letter addressed to the Commission under date of December 1st, 1936, a copy of which letter and a list of said appeals being hereto attached.

"QUESTION: What is the correct procedure for the Tax Commission to follow in said appeals?

Should the Commission proceed to hold hearings and take evidence in the matter as in other cases? Or should the Commission remand the said appeals back to the Board of Revision for their further consideration? Or what, in your opinion, is the correct procedure to follow?"

Attached to the foregoing communication is a copy of a letter from the Prosecuting Attorney of Cuyahoga County, in which he complains that no pertinent facts were given in the complaints and that all of the blank spaces in answer to the questions contained therein were left blank. That under date of May 20, 1936, complainants were notified in writing, to furnish within ten days the information requested in the complaint forms and that the complainants were further informed that

without such information the Board of Revision would be obliged to reject the complaints, which it proceeded to do.

As stated in your letter the General Code outlines the procedure to be followed in the filing of complaints involving any valuation or assessment against real estate. The sections applicable are as follows:

“Sec. 5609. Complaints against any valuation or assessment as the same appears upon the tax duplicate of the then current year, may be filed on or before the time limited for payment of taxes for the first half year, or at any time during which taxes are received by a county treasurer, without penalty for the first half year. Any taxpayer may file such complaint as to the valuation or assessment of his own or another’s real property, and the county commissioners, the prosecuting attorney, county treasurer, or any board of township trustees, any board of education, mayor or council of any municipal corporation, in the county shall have the right to file such complaint. The county auditor shall lay before the county board of revision all complaints filed with him. The determination of any such complaint shall relate back to the date when the lien for taxes for the current year attached, or as of which liability for such year was determined, and liability for taxes, and for any penalty for non-payment thereof within the time required by law, shall be based upon the valuation or assessment as finally determined. Each complaint shall state the amount of over-valuation, under-valuation, or illegal valuation, complained of; and the treasurer may accept any amount tendered as taxes upon property concerning which a complaint is then pending, and computed upon the claimed valuation as set forth in complaint, and if such tender is not accepted no penalty shall be assessed because of the non-payment thereof. The acceptance of such tender, however, shall be without prejudice to the claim for taxes upon the balance of the valuation or assessment. A like tender may be made, with like effect, in case of the pendency of any proceedings in court based upon an allegedly excessive or illegal valuation.”

“Sec. 5609-1. Whenever a county board of revision renders a decision on a complaint filed under the provisions of Section 5609 of the General Code, it shall by registered mail certify its action to the person in whose name the property is listed, or sought to be listed, or to the attorney or agent filing such complaint.”

Sec. 5610. An appeal from the decision of a county board of revision may be taken to the tax commission of Ohio, within thirty days after notice of the decision of such board is served as provided in Section 5609-1 of the General Code; by the county auditor or any complainant. Such appeal shall be taken by written notice to that effect, filed with the tax commission, and with such county board. Upon receipt of notice of appeal, such county board shall notify all parties interested, in the manner provided herein, and shall file proof of such notice with the tax commission of Ohio. The county board of revision shall thereupon certify to the commission a copy of the record of the board of revision pertaining to the original complaint, together with the minutes thereof, and all evidence, documentary or otherwise, offered in connection therewith. Such appeal may be heard by the Commission in the county where the property is listed for taxation, or the commission may cause one or more of its examiners to be sent to such county, to conduct such hearing, which shall be held not more than sixty days from the notice of such appeal. Such examiners shall report their findings thereon to the state tax commission for its affirmation or rejection."

"Sec. 5611. The tax commission of Ohio may hear the appeal on the record, minutes and evidence thus submitted or may in its discretion make other investigations with respect to the complaint. The commission shall ascertain and determine the true value in moneys of the property complained of and certify its action to the county auditor, who shall correct the tax list and duplicate in the manner provided by law for making corrections thereon."

"Sec. 5580. The county treasurer, county auditor, and the president of the board of county commissioners of each county shall constitute a county board of revision."

"Sec. 5597. It shall be the duty of the board of revision to hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year, and it shall investigate all such complaints and may increase or decrease any such valuation or correct any assessment complained of, or it may order a re-assessment by the original assessing officer."

A review of the transcript on appeal (covered in your first statement of facts) shows the complaint was filed with the Cuyahoga County Board of Revision as of May 2, 1936. This is known as complaint No.

35488. In this complaint the complainant sets out a description of its real estate involved, its "current assessed value", its "last year's assessed value", its alleged "real value" and the "decrease asked." *An item of "Pertinent Facts", listed on the complaint form, was not filled out.* A rubber stamped statement appears on the margin of the complaint, reading as follows: "Complainant reserves the right to amend this complaint in respect of the amount of the decrease in value requested. Full information in support of this complaint will be filed within 30 days."

On July 17, 1936, the Board advised the agent for complainant, as follows:

"Your complaints filed as to the assessment of the above properties, (No. 35488, Cleveland included) were this day considered by the Cuyahoga County Board of Revision. *As no evidence was submitted as provided for in Section 5601 of the General Code of Ohio, the Board disallowed said claims.*" (Italics the writer's.)

Appeal was filed on August 14, 1936, to the Tax Commission of Ohio, by this complainant. A review of the Transcript on Appeal on complaint No. 35485, as set out in your *Second Statement of Facts*, shows the complaint form being filled out only as to "description of real estate," "current assessed value," "last year's assessed value," "real value" and "decrease asked." The item of "pertinent facts" was again not filled out. This complaint was filed with the Cuyahoga County Board of Revision as of May 2, 1936.

On June 10, 1936, the board notified complainant as follows:

"Your complaint filed as to the assessment of the above properties, were this day considered by the Cuyahoga County Board of Revision. *As no evidence was submitted as provided for in Section 5601 of the General Code of Ohio, the Board disallowed your claim.*" (Italics the writer's.)

Appeal was filed on this complaint as of July 10, 1936, to the Tax Commission of Ohio.

The question now to be considered is, whether the Cuyahoga County Board of Revision acted on these real estate assessment complaints, according to law, and whether the action taken by it was of such a final nature as would authorize complainants to file notice and perfect their appeal to the Tax Commission of Ohio.

Section 5601, General Code, defines the procedure the Board of Revision must follow in decreasing a valuation complained of. It provides:

"The county board of revision shall not decrease any valuation complained of, unless the party affected thereby, or his agent, makes and files with the board a written application therefor, verified by both showing the facts upon which it is claimed such decrease or reduction should be made." (Italics the writer's.)

You will notice that this section provides that the board "shall not" decrease any valuation complained of unless the "party affected" files a "written application" showing "the facts" upon which it is claimed such decrease or reduction should be made, under oath.

The complainants apparently prepared their written applications in proper form, except for their failure to fill in the item of "Pertinent Facts," which the Board of Revision held was justifiable grounds for dismissing the complaints. The prosecuting attorney of Cuyahoga County, in his letter to the Tax Commission, holds that the Board of Revision was powerless to act in the situation stated, because the Board had no "facts" on which to act and that in consequence there was "no hearing" on the same and that therefore no "right of appeal" existed. He further stated, "it is our contention, therefore, that, under the circumstances, the Tax Commission is without jurisdiction to proceed with the complaints contained in the list attached thereto."

Section 5609, General Code, supra, provides:

"Each complaint shall state the amount of over valuation, under valuation or illegal valuation complained of."

There is no question but what this was done by complainants in the two cases mentioned herein. Does the information required to be furnished to the County Board of Revision under Section 5609, General Code, meet the requirements of Section 5601, General Code, as to "the facts" on which the board can act to make a determination of the complaint? I believe it does.

There is no question but that the County Board of Revision did consider the information or facts filed by complainants, on their written applications for reduction of assessments, in making their final decision that they did not have sufficient evidence on which to award a reduction, and for that reason the assessments as made, should be final.

This, in my opinion, was a final order by the County Board of Revision from which complainants had the right to perfect an appeal to the State Tax Commission.

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

1. The Tax Commission of Ohio has the authority to act on said appeals and to make such investigation and take such further action on the same as may be necessary to comply with the provisions of Section 5610 and 5611, of the General Code.

2. The action of the County Board of Revision in dismissing the complaints filed by complainants for a decrease in the valuation of property appearing on the tax duplicate for the then current year, which complaints were filed under authority of Sections 5609 and 5601, General Code, constitutes a final order from which an appeal to the Tax Commission of Ohio may be perfected.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

699.

APPROVAL—GRANT OF EASEMENT EXECUTED TO THE
STATE OF OHIO BY THE TRUSTEES OF MARION TOWNSHIP,
ALLEN COUNTY, OHIO.

COLUMBUS, OHIO, June 4, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval grant of easement No. 822, executed to the State of Ohio by the Trustees of Marion Township, Allen County, Ohio, conveying to the State of Ohio, for the purposes therein stated, a certain tract of land in said township and county.

By the above grant there is conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instrument, I find that the same has been executed and acknowledged by the grantors in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,

Attorney General.