882.

DELINQUENT TAXES—DEFAULT ON INSTALLMENTS UNDER SECTIONS 3 to 6, AMENDED SENATE BILL NO. 42, 90th GENERAL ASSEMBLY—COLLECTION OF UNPAID TAXES AND PENALTY—INTEREST HOW COMPUTED.

SYLLABUS:

When a taxpayer enters into an agreement pursuant to Sections 3 to 6 of Am. S. B. 42, enacted by the 90th General Asembly, for the payment of the delinquent taxes assessed and becoming delinquent prior to August 15, 1932, and thereafter, pursuant to the provisions of such agreement, pays one or more of such installments and then defaults in the performance thereof, such act authorizes the collection of such delinquent taxes remaining unpaid, plus a ten percent penalty on same, any interest charged and entered on the delinquent land duplicate prepared August 15, 1932, and any unpaid interest computed at the rate of 4% per annum on such deferred installments under such contract to the date of the breach and from the date of the breach at the rate of 8% per annum.

COLUMBUS, OHIO, May 26, 1933.

HON. HAROLD U. DANIELS, *Prosecuting Attorney, Lake County, Painesville, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

> "We have before us amended Senate Bill No. 42, having to do with remission of penalties and interest in the event of payment of cash or the entering into an undertaking to pay delinquent real property taxes and assessments in installments.
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> The provisions of the law seem clear with this one exception. We wonder if you have passed upon its meaning. We refer to the last paragraph of Section 6 and especially the last clause, reading as follows:
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> ' * * and the interest, if any, chargeable on such tax list and duplicate at the rate prescribed by the permanent law of this state shall be computed from the date of default only.'
>
> Consider the following example: $100.00 taxes due and unpaid for each of the following years, 1928, 1929, 1930, 1931 and 1932. If an undertaking is entered into, upon the payment of $145.00 in cash and an undertaking for $360.00 given, and one or two payments of $40.00 were made on the undertaking and then default occurred.
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> Query: What interest would be figured and from what dates? Consider the date of default as occurring June 20th, 1935.
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> If the 8% interest is dropped from the date the taxes were first due until the date of default, then everyone should immediately enter into such an undertaking."

The last paragraph of Section 6 of Am. S. B. 42, enacted by the 90th General Assembly, to which you refer, reads:

> "In case of any default in the payments under the undertaking provided for in this act, the county treasurer shall enter on the duplicate the date and the fact of such default. Thereupon such undertak-

ing shall be canceled of record in the office of the treasurer and a certificate of such cancellation shall be given to the county auditor, and such officer and all other officers authorized by permanent law in this state to act in the premises, shall proceed to enforce the payment and collection of such delinquent taxes, assessments, penalties and interest, in the manner prescribed by the permanent law of this state therefor; excepting that in such event there shall be credited on the tax list and duplicate and the delinquent land tax list and duplicate thereof the amounts theretofore paid under such undertaking, and the penalties on such delinquent taxes and assessments shall be adjusted to the amount of the principal sum thereof remaining unpaid; and the interest, if any, chargeable on such tax lists and duplicates at the rate prescribed by the permanent law of this state shall be computed from the date of such default only."

The payments referred to in such section are those provided by Section 3 of such act. That is, at any time prior to the February tax settlement during the calendar year 1934, the taxpayer may pay the then current year's taxes and enter into an agreement to pay prior delinquencies, exclusive of the penalty and interest thereon in six annual installments, with interest on the deferred installments at the rate of 4% per annum, from the date of the agreement until the date of payment, such annual installments being apportioned as follows: The first five thereof, being each in the amount of 10% of the principal amount of the delinquent tax plus the 4% interest on the deferred installments, the sixth, or final payment for the remainder of, or 50% of such delinquencies plus the accrued interest at such rate on the installment. (See sections 1, 2 and 3 of such act.)

Your inquiry presupposes a case where the taxpayer, upon the payment of the tax for the year 1932, enters into the agreement authorized by Section 3 of such act, pays the 10% agreed to be paid for the year 1932, in 1934 pays the 10% installment plus the 4% interest on the unpaid installments but in 1935 neglects or is unable to pay the remaining installments. Upon such supposition, you inquire as to the rate of interest required to be computed on such delinquencies, also as to the date from which it is to be computed, assuming the final date of payment for the last half of the taxes for the tax year 1934 to be June 20th, 1935.

Using the figures set forth in your inquiry, I will assume that the tax for each of the years, 1928, 1929, 1930 and 1931, was the sum of $100.00. In order to enter into the agreement it would be necessary for the taxpayer to have paid the tax for the year 1932 and 10% of the $400.00 delinquencies of former years. I assume also that upon payment of the taxes for the tax year 1933 the taxpayer will have paid the 1933 taxes, together with an additional payment of 10% of $400.00 and the 4% interest on the then remaining $360.00, leaving a balance of unpaid taxes for former years, if payments have been made pursuant to the taxpayer's agreement, of $320.00.

You will note that the only effect of the entering into of such agreement other than that of permitting the taxpayer to pay such delinquencies in installments, is to prevent the lands against which the taxes were assessed, from being entered upon the foreclosure list described in Section 5718 et seq., General Code. Such provision is contained in Section 3 of the act, which reads in part:

"Upon receipt of such certificate the county auditor shall note on the tax list and duplicate, and on the delinquent tax list, in such manner as the bureau may prescribe, the fact that such undertaking has been entered into; and thereafter, so long as such undertaking shall continue to be performed, the lands against which said delinquent taxes or assesments, penalties, interest and other charges are charged, shall not be entered on the foreclosure list, anything in the permanent statutes of this state to the contrary notwithstanding."

The penalties and interest theretofore assessed are not abated or annulled until the agreement of the taxpayer is fully performed. Such provision is contained in the last paragraph of Section 8, which reads:

"Upon the satisfaction of all taxes and assessments for the years prior to the year 1932 in accordance with the provisions of this act, all penalties and interest on taxes and penalties for said years prior to the year 1932 shall be abated and cancelled; and in the event any such taxes and assessments have heretofore been paid but the penalties and interest thereon have not been paid, then such penalties and interest shall be so abated and cancelled."

I find no provision of such act which purports to abate any interest which has been computed and charged on the delinquent list and duplicate prepared by the county auditor at the time of the August settlement in the year 1932. The provisions of Section 5704, General Code, required the county auditor at the time of the August settlement in the year 1932 to prepare a delinquent land list and duplicate which must show the amount of the delinquent taxes, assessments, penalty and *interest* accrued thereon. Such section, in so far as is material to your inquiry, reads:

"Immediately after each August settlement, the county auditor shall make and certify a list and duplicate thereof of all the delinquent lands in his county. The first of such delinquent land lists so to be made by the county auditor shall also contain all lands theretofore certified as delinquent to the auditor of state and not redeemed, or with respect to which an action to foreclose the tax lien thereon has not been filed. Such delinquent land list and duplicate shall contain the description of the property as it appears on the tax list, the name of the person in whose name it is listed and the amount of taxes, assessments and penalty thereon due and unpaid, together with the amount of interest, if any, accrued thereon to the date of such August settlement. * * Interest at the rate of eight per centum per annum on the total amount of taxes and assessments due and unpaid with respect to each tract or lot, or part of lot entered upon such delinquent tax list and duplicate shall be charged thereon from the date of such settlement. * *"

Such section provides that such amount of taxes and assessments so entered on such duplicate shall bear interest at the rate of 8% from the date of delivery of such duplicate to the county treasurer.

The language of Section 6 of such Am. S. B. 42 is not that any interest already charged upon the duplicate in compliance with the provisions of law

shall be abated, but is, "the interest, if any, *chargeable* on such tax lists and duplicates at the rate prescribed by the permanent law of this state shall be computed from the date of such default only." It should be borne in mind that after such tax is entered on that duplicate interest is chargeable by the county treasurer until the item is paid.

The meaning given in Webster's New International Dictionary of the word "chargeable" is "that may be charged; liable to be charged." In other words, it refers to, or has the connotation of something to be done rather than to something already done; while the word "charged" clearly refers to a charge already made or assessed.

It is a well established rule that all of the sections of the tax laws with reference to the collection or assessment of taxes on real property are in pari materia and should be construed in the light of each other, so as, if possible, not to render a conflict between their provisions, for it is never to be presumed that the legislative intent is to have any of its enactments conflict with each other. *Cochrel* vs. *Robinson,* 113 O. S. 526.

I am therefore, of the opinion that the expressed legislative intent in the enactment of Am. S. B. 42, of the 90th General Assembly, is that any interest, penalties or charges already assessed and entered on the duplicate at the time of the August, 1932, settlement upon the taxpayer's entering into the agreement authorized by Section 3 of such act, was not to abate the penalties and interest already charged and entered on the dublicate, but rather to render dormant the right to collect such items until either such contract is performed, in which event they will be abated, or until default when they again become collectible. In the interim, or during such dormancy, the principal amount of the taxes and interest bear interest at the rate of 4% per annum (Section 3 of Am. S. B. 42). However, after default, interest again begins to run at the rate of 8% per annum.

Applying such rule to the specific facts set forth in your inquiry, the $320.00 item of delinquent taxes would bear interest at the rate of 4% from June 20, 1934, to June 20, 1935, after which it would bear interest at the rate of 8% per annum.

Your inquiry contains one further question, as to the adjustment of the penalty on that part of the delinquent assessments that was paid in the installments paid in June of 1933 and 1934. The language of the act is that "the penalties on such delinquent taxes and assessments shall be adjusted to the amount of the principal sum thereof remaining unpaid." Thus, the penalty on the original tax was 10% on $400.00 or $40.00; the remaining balance of the principal of such taxes on June 20, 1935, would be $320.00 and the 10% penalty thereon would be $32.00, or an abatement on the penalty of $8.00 should be made.

It should be borne in mind that the portion of Section 6 of such Am. S. B. 42, giving rise to your inquiry, is an exception or proviso clause and in the interpretation of such clauses, must be given a strict interpretation. As stated by Wanamaker, J., in *State ex rel. Keller* vs. *Forney,* 108 O. S. 463, 467:

> "The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law; the presumption is that what is not clearly excluded from the law is clearly included in the operation of the law."

It therefore follows that when the general tax law requires the payment of an interest item by a taxpayer, and when a special act authorizes the forbear-

ance of such interest item under certain circumstances, a strict compliance with the provisions of law authorizing such forbearance should be required.

It is my opinion on your specific inquiry that when a taxpayer enters into an agreement pursuant to Sections 3 to 6 of Am. S. B. 42, enacted by the 90th General Assembly, for the payment of the delinquent taxes assessed and becoming delinquent prior to August 15, 1932; thereafter, pursuant to the provisions of such agreement, pays one or more of such installments and then defaults in the performance thereof; such act then authorizes the collection of such delinquent taxes remaining unpaid, plus a ten percent penalty on same, any interest charged and entered on the delinquent land duplicate prepared August 15, 1932, and any unpaid interest computed at the rate of 4% per annum on such deferred installments under such contract to the date of the breach and from the date of the breach at the rate of 8% per annum.

Respectfully,
JOHN W. BRICKER,
Attorney General.

883.

MUNICIPAL HOSPITAL—DIRECTOR OF PUBLIC SAFETY, IN ABSENCE OF ORDINANCES TO CONTRARY, SHOULD FIX RATES CHARGED PATIENTS.

SYLLABUS:

In the absence of any charter provision relating thereto, the director of public safety should fix the rates charged for services to patients in municipally owned hospitals if there be no municipal ordinance with reference thereto, but if there be ordinances in existence or if at any time the council passes ordinances regulating the rates to be charged, then such ordinances would be controlling.

COLUMBUS, OHIO, May 26, 1933.

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

GENTLEMEN:—I am in receipt of your recent request for my opinion which reads as follows:

> "Section 4035 of the General Code reads in part as follows:
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> 'The director of public safety shall have the entire management and control of such hospital, when completed and ready for use, and subject to the ordinances of council, shall establish such rules for its government, and the admission of persons to its privileges, as he deems expedient. * * *'
>
> Because of the wording of the above, it appears that this Department has always held that council shall fix the rates to be charged for patients being treated within a municipally owned hospital.
>
> The position is taken by many cities that this is a matter entirely under control of the director of public safety and we are enclosing an opinion given by a city solicitor to a city manager in Ohio whose duties include those of a director of safety in cities where a charter has not been adopted.