

prosecuted, for the period of fifteen years. On that question we express no opinion, but more than fifteen years had elapsed from the payment and the commencement of the action."

Concisely stated, the holding in this case is, that where the default occurred more than twenty-one years before the bringing of the action, a payment more than fifteen years old would not revive the instrument for any purpose. I would not say that this holding amounts to a rule of property in this state but I think your department should follow it so long as it stands unmodified if occasion requires it. But that precise question is not now before me and I have discussed this case in the main for the purpose of showing its exact application.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1592.

MUNICIPAL CORPORATIONS—BOUNDARIES FOR TAX LEVYING PURPOSES DETERMINED AS OF FIRST MONDAY OF JUNE—CHANGES OF BOUNDARIES THEREAFTER MADE BY ANNEXATION DO NOT AFFECT TAX LEVIES FOR SUCCEEDING YEAR.

*The boundaries of a municipal corporation for tax levying purposes are to be determined as of the first Monday of June. Changes of boundaries thereafter made by annexation, or otherwise, do not affect the tax levies for the succeeding year.*

COLUMBUS, OHIO, September 27, 1920.

HON. ISAAC C. BAKER, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—You have submitted the following question for the opinion of this department:

"The city of Hamilton on July 7, 1920, passed the final ordinance annexing certain territory to the municipality and a transcript of the proceedings was presented to the county auditor for transfer August 25.

The county auditor holds that tax lien effective the second Monday of April cannot be made to include the increased taxes and also that township officials rightfully, in budget prepared and certified in June based their figures on this property valuation remaining in the township.

I would like your opinion on the questions presented by the above facts, that is, whether or not the township or municipal levy should be made on the property annexed to the city."

This inquiry raises the general question as to what is the date as of which the boundaries of taxing districts are to be determined for tax levying purposes; putting it in another way: what is the latest date at which the boundaries of a taxing district may be changed with respect to the making of tax levies.

The suggestion involved in your statement of the auditor's position is that the lien date in April (the day preceding the second Monday of April—Section 5671 of the General Code) is the date for which we are seeking. This suggestion is not believed to be well taken. While the lien attaches on that date, yet the process of levying is not yet complete, nor even commenced. The lien is in effect an inchoate encumbrance, in that the amount of it is never determined at this time.

A more likely date would seem to be the date when taxes are required to be levied in the ordinary course of affairs. Under some of the special provisions of the Smith one per cent law, so-called, (sections 5649-1 to 5649-5b, inclusive of the General Code) which now control all other statutes relating to the levying of taxes, it is possible that a levy may be made as late as November (sections 5649-5 et seq. of the General Code), which is after the time at which the tax duplicate is supposed to be in the hands of the county treasurer for collection. (See section 2595 of the General Code). There really cannot be said to be any definite last date for the extension of a lawful levy of taxes properly made within time, until the second half of the taxes are collected. (See *State ex rel. vs. Roose*, 90 O. S. 345).

However, these instances are exceptional, and the true principle requires us, it is believed, to find the normal date for making of tax levies, as distinguished from the exceptional authority which exists to make levies after such normal date, and as distinguished also from the machinery of revision of tax levies and the physical act of extension of the levies on the duplicate, which is merely clerical. It is believed that section 5649-3a of the General Code states this time, and that its provisions are applicable to all taxing districts. It is to the effect that:

"On or before the first Monday in June, each year, \* \* \* all \* \* \* officers authorized by law to levy taxes, \* \* \* shall submit \* \* \* an annual budget."

For a further illustration it may be conceded that amended budgets may be filed after the date named, and that a budget not filed on or before the first Monday in June may, nevertheless, be filed later while the budget commission is in session, as the provision as to time is directory. In the opinion of this department, however, the question submitted by you requires some one date to be chosen, and the date mentioned in section 5649-3a, though the section is directory, is the proper one. Such authority as exists on the question points in this direction.

The question was involved in *State ex rel. vs. Craig*, 21 C. C. 13. That case did not arise under the present Municipal Code and taxing statutes, but the principles therein involved are the same as those which must be applied to the present statutes. The syllabus of the case sufficiently discloses the holding therein, as follows:

"1. An incorporated village is a proper party on whose relation an action for a writ of mandamus may be maintained to compel the county auditor to place the municipal tax upon property newly annexed to the village.

2. On the passage and legal publication of the municipal ordinance accepting an application for the annexation of certain territory, such territory becomes a part of the village, although the transcript, map and other papers were not filed for record until a later date.

3. When the boundaries of a municipal corporation are extended prior to the first Monday of June, no special provision is necessary to authorize the levy of the municipal tax upon the annexed property; and the county auditor may be compelled by mandamus by such municipal corporation to levy on such newly annexed property the municipal instead of the township tax."

The court in the opinion, per Hale, J., refers to section 2691 of the Revised Statutes, which provided as follows:

"The council shall cause to be certified to the auditor of the county,

on or before the first Monday in June, annually, the percentage by it levied on the real and personal property in the corporation returned on the grand levy, who shall place the same on the tax list for the county in the same manner as township taxes are by law placed thereon; the ordinance prescribing the levy shall specify distinctly each and every purpose for which the levy is made, and the per cent thereof; and when a corporation has been formed, or boundaries of a corporation extended, subsequent to that time, the council shall determine whether it would be right and expedient to assess a tax on the taxable property in such territory for the current year; and if the council determine to make such levy, it shall also determine the rate, and time of payment, and certify the same to the county auditor, which tax shall be placed on the duplicate and collected as other taxes."

This section was supplanted in the Municipal Code of 1902 by section 3794 of the General Code, wherein the date was changed to the "first Monday in July" and the last part of the section was omitted. Said section 3794, in so far as it relates to the date, has in turn been supplanted, as above indicated, by section 5649-3a of the General Code, requiring the submission of the budget on or before the first Monday in June.

The argument of the court was largely based upon section 2691 R. S., which expressly dealt with the kind of question raised by you and, by providing specially for the levying of a tax when the boundaries of corporations are changed after the regular tax levying day, had the implied effect of establishing the rule that, in the absence of such special provision, the extension of the boundaries of a municipal corporation after the regular tax levying date would not affect the tax levies. This being the established construction of section 2691 of the General Code, the omission of the language providing for special tax levies after the regular levying date, in the event of the extension of the boundaries of a municipal corporation after that time, unquestionably had the effect as a matter of statutory interpretation of doing away with the authority to make a levy applicable to such changed boundaries after the regular levying date; then when the levying date was changed back to the first Monday in June the principle involved requires us to hold that the effect was to make that date the time as of which the boundaries of municipal taxing districts at least are to be ascertained for tax levying purposes.

Accordingly, it is the opinion of this department that the boundaries of a municipal corporation as they exist on the first Monday of June constitute the municipal taxing district for the purpose of levies resulting from budgets to be submitted on that date.

As both the dates mentioned in your letter came after the first Monday in June, 1920, it is unnecessary to consider whether the process of annexation was complete on July 7 or was not complete until August 25. To determine exactly when the process of annexation was complete so as to effect the change of boundaries would require consideration of the method of annexation, which your letter does not disclose; but this point seems, for reasons just stated, to be immaterial.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*