

3055.

REGISTRAR OF MOTOR VEHICLES—UNAUTHORIZED TO CORRECT ERRORS IN DISTRIBUTION OF LICENSE FEES BY USING CURRENT YEAR'S COLLECTION TO CORRECT ERRORS OF PREVIOUS YEARS—DUTY OF BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—HOW ERRORS CORRECTED.

SYLLABUS:

1. *When there are errors made by applicants for motor vehicle licenses or the officials taking such applications in the giving of the registration districts and such errors made in one year are not found until the following year or subsequent years, the Registrar of Motor Vehicles in making distribution of the license fees to the various subdivisions is not authorized to use the current year's collection to correct errors of previous years.*

2. *The state examiners of the Bureau of Inspection and Supervision of Public Offices, when proof of the errors is furnished, may make findings in their reports against one registration district in favor of another registration district, and if tax revenue which should have been distributed to a taxing subdivision has been distributed to another subdivision through a mistake of fact, the former subdivision may recover from the latter by an action in the nature of an action for money had and received, the amount which the other subdivision had been so unjustly enriched.*

COLUMBUS, OHIO, August 18, 1934.

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

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

"In the last several years, in some cases, applicants for a motor vehicle license have given a registration district different than the one in which his place of residence or place of business (in the case of motor vehicles used for hire or principally in connection with an established business) is located, or the Deputy Registrar in preparing the application may have placed thereon the incorrect registration district, resulting in one district receiving revenue from such license fee rightfully belonging to another district.

Question 1. When there are errors made in one year, but not found until the following year, or subsequent years, may the Registrar of Motor Vehicles, in making distribution of the license fees, use the current year's collection to correct errors of previous years?

Question 2. In case such offset cannot be made by the Registrar of Motor Vehicles in making distribution of these license funds, can state examiners of the Bureau of Inspection and Supervision of Public Offices, when proof of the errors is furnished, make findings in their reports against one registration district in favor of another registration district, and the one registration district have legal remedy to collect that part of the distribution of the license fees which should have been paid them if the registration district had been correctly reported as against the district which was incorrectly overpaid a share of the former sub-division's license tax money?"

The Bureau of Inspection and Supervision of Public Offices and the Bureau of Motor Vehicles are creatures of statute. Such state bureaus, like other state boards and public officers, have those powers and duties, and those only, that are placed upon them by statute or are necessarily implied from the powers so expressly given. *State ex rel. vs. Commissioners*, 8 N. P. (N. S.) 261, 20 O. D. (N. P.) 879; affirmed *Ircton vs. State ex rel.*, 12 C. C. (N. S.) 202; 21 O. C. D. 212, 412; affirmed without opinion in *Ircton vs. State*, 81 O. S. 562; *State ex rel. vs. Kraft*, 19 O. A. R. 454, 456; *Peter vs. Parkinson, Treas.* 83 O. S. 36, 49; *Jones, Auditor, vs. Commissioners of Lucas County*, 57 O. S. 189; *Elder vs. Smith, Auditor et al.*, 103 O. S. 369, 370; *State ex rel. Copeland vs. State Medical Board*, 107 O. S. 20; *Civil Service Commission vs. State, ex rel.*, 127 O. S. 261.

Bearing the above in mind, my search of the General Code of Ohio fails to reveal any provision of law which gives the Registrar of Motor Vehicles or the State Examiners of the Bureau of Inspection and Supervision of Public Offices any authority to use the current year's collection of Motor Vehicle License Taxes to offset errors of previous years, even though there has been erroneous listing of registration districts on the license applications of previous years. However, if errors were found before distribution of the current license tax fund it would be the duty of the Registrar of Motor Vehicles to correct it as a necessary implication from his duties "to administer the laws of the State relative to the registration of motor vehicles," (G. C. 6290-1), such law specifying that correct information must be given in the license application.

Therefore, in my opinion, such errors cannot be corrected by offsetting one year's distribution against another after such applications have been used as a basis of license revenue distribution, as there is no statutory authority allowing such offset.

I am unable to find any Ohio cases on the question in point as to whether current year's collections can be used to correct or offset errors of previous years, but a similar question was decided by the Supreme Court (1927, *Posados vs. Manila*, 274 U. S. 410). In this particular case the question involved was whether or not an officer of the State whose office was created by statute and whose authority was limited by statute had the power to withhold from "X" taxing district's share of tax money, enough to pay what was due to the "Y" taxing district from the "X" taxing district. Chief Justice Taft held that a share of taxes due to one taxing district could not be diverted to another district to offset an obligation of the former to the latter. The case is parallel to the one at hand in that the authority of the officers in question in the present case is derived from statute as was true in the above cited case, and the question involved is parallel in that both concern the use of the current year's collection to offset errors of previous years.

Section 6294, General Code, reads in part:

"Every owner of a motor vehicle * * * shall cause to be filed * * * in the office of the registrar or deputy registrar a written application in triplicate for registration * * * containing the following information:

(3) The district of registration, which shall be determined as follows:

(a) In case the motor vehicle to be registered is used for hire or principally in connection with any established business or branch business, conducted at a particular place, the district of registration shall be the municipal corporation in which such place is located; and if not

located in any municipal corporation, the county and township in which such place is located.

(b) In case such vehicle is not so used, the district of registration shall be the municipal corporation or county in which the owner resides at the time of making application. * * *

Section 6309, General Code, provides:

"The * * * registrar shall open an account with each county and district of registration in the state. He shall pay all registration fees directly to the treasurer of state with other receipts of his office. With each such payment he shall certify the amount thereof to be paid into the state treasury to the credit of the 'state maintenance and repair fund,' and the amount to be distributed to the counties and districts of registration respectively. The treasurer of state shall be the custodian of the funds to be distributed to the counties and districts of registration and shall disburse the same in the manner provided in section 6309-2 of the General Code. * * *

* * * Once each month the * * * registrar shall prepare vouchers in favor of the auditor of each county for the amount of the tax collection apportioned to the county and the districts of registration located wholly or in part in his county, and transmit the same to the auditor of state who shall draw warrants on the treasurer of state payable to the various county auditors. The * * * registrar shall transmit said warrants to the several county auditors, together with a certificate in each case, showing the distribution of the amount represented thereby to the county and each district of registration therein. The county auditor shall distribute the proceeds of the tax collections due the county and the districts of registration in the manner provided in section 6309-2 of the General Code."

Section 6309-2, General Code, with reference to the distribution of the license funds, provides:

"The revenue collected under the provisions of this chapter shall be distributed as follows:

(1) Twenty-five per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration as provided in this chapter. The portion of such money due the municipal corporation shall be paid into the treasuries of such municipal corporations * * * forthwith upon receipt by the county auditor and the remainder retained in the county treasury. In the treasuries of such counties, such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads and highways, and for no other purpose, and shall not be subject to transfer to any other fund. 'Maintenance and repair' as used in this section, includes all work done upon any public road or highway in which the existing foundations thereof are used as a sub-surface of the improvement thereof, in whole or in substantial part; and in the treasuries of such municipal corporations, such moneys shall constitute a fund which shall be used for the maintenance, repair, construction and repaving of public streets, and for no other purpose and shall

not be subject to transfer to any other fund, provided however that as to such municipal corporations, not more than fifty per cent of the total funds available during any year from such source including the unexpended balance of such funds from any previous year, shall be used in such construction and repaving which shall be done by contract let after the taking of competitive bids as provided by law, or in the manner provided in the charter of any such municipal corporation.

(2) Five per centum of all taxes collected under the provisions of this chapter, together with interest earned by fees deposited by the treasurer of state as provided in section 6309 of the General Code, shall constitute a fund for the use of the several counties for the highway and road purposes specified in paragraph (3) of this section. Said fund shall be divided equally among all the counties in the state. Said fund shall be paid out on vouchers prepared by the * * * registrar and warrants drawn by the auditor of state in equal proportions to the county auditor of each county within the state, to be used for the purposes herein designated.

(3) Forty-seven per centum of all taxes collected under the provisions of this chapter shall be for the use of the county in which the owner resides or in which the place is located at which the established business or branch business in connection with which the motor vehicle registered is used, as the case may require, for the construction, reconstruction, improvement, maintenance and repair of roads and highways.

(4) Twenty-three per centum of all taxes collected under the provisions of this chapter shall be paid by the * * * registrar into the state treasury to the credit of the 'state maintenance and repair fund,' as provided in section 6309 of the General Code.

The 'state maintenance and repair fund' provided for herein shall be available for the use of the * * * registrar in defraying the expenses incident to carrying out * * * the provisions of this chapter and for the use of the director of highways in the manner provided by law. The general assembly shall make appropriations therefrom for such purpose."

It is apparent from a reading of the foregoing sections that there is specific directory authority as to the distribution of the collections made by the Registrar of Motor Vehicles, and that the share to be paid to each taxing district is fixed thereby. Since the distribution of these tax revenues is clearly provided for by statute and the duties of the Registrar of Motor Vehicles is purely a mandatory one there is no discretion in such officials in the distribution of current taxes. It merely becomes the ministerial duty of the Registrar of Motor Vehicles to prepare vouchers for the share of each subdivision which is fixed by statute. It then becomes the duty of the State Auditor, when such voucher of the Registrar of Motor Vehicles is presented to him, to draw warrants on the treasury of the State for the amount appearing upon such vouchers. Furthermore, neither the Auditor of State nor the Registrar of Motor Vehicles is given the power to dispense with or suspend the operation of positive law in reference to the course which shall be followed in the disposition of the Motor Vehicle Revenue Tax which they are directed by statute to pay to the various registration districts.

However, a taxing district which has suffered financial loss as a result of an erroneous listing of taxing districts by the various applicants in previous years of the distribution of the Motor Vehicle License Tax is not without remedy for

recovery of its just share of the Motor Vehicle License Revenue. It was held in Opinions of the Attorney General for 1933, Vol. 3, page 1728, as disclosed by the first branch of the syllabus:

"1. Where a political subdivision has been enriched at the expense of another subdivision, by reason of there having been distributed to it through mistake of facts, tax revenues which should have been distributed to the other subdivision, the latter may recover from the former in an action in the nature of an action for money had and received, the amount which the former subdivision has been enriched so unjustly."

Although this precise question has never come before the courts of Ohio, the principle of law above stated has been universally followed in this country including decisions in the United States Supreme Court. Citations of authority are so legion that I shall not attempt to cite all the cases following the above principle. They may be found collated in Vol. II R. C. L. page 778, Vol. I R. C. L. Supp. page 547. In the case of *Township of Balkan, Respondent, vs. Buhel*, 197 N. W. 266, it was held:

"2. The action for money had and received is a remedy whereby one municipality may recover from another tax money which in equity and good conscience belongs to the former."

In *Strough vs. Board of Supervisors, Jefferson County*, 119 N. Y. 212, it was held "that an action for money had and received is the appropriate remedy where there has been a diversion of taxes from the purposes for which they were assessed and levied, and a payment thereof to an officer or department of government not entitled thereto."

It is also stated in 61 Corpus Juris at page 1533:

"Taxes erroneously distributed and paid to one not entitled thereto may be recovered by the one making the payment or the one legally entitled thereto even though the taxes have already been expended." (*Gilpatric vs. City of Hartford*, 120 A. 317, 98 Conn. 471; *Hobart Twp. vs. Town of Miller*, 102 N. E. 847, 54 Ind. App. 151; *Pittsfield vs. Exeter*, 41 A. 82, 69 N. H.; *Village of Elmira Heights vs. Town of Horseheads*, 250 N. Y. S. 50, 140 Misc. 147; *Erie County vs. Town of Tonawanda*, 159 N. Y. S. 714, 95 Misc. 663.

It was also held in the case of *Village of Elmira Heights vs. Town of Horseheads*, 250 N. Y. S. 50, affirmed in 254 N. Y. S. 418, (1933) that a village could recover by action a portion of corporate transmission tax money erroneously paid to a town. Also see *City of Buffalo vs. Erie County*, N. Y. S. 409, affirmed 220 N. Y. S. 620, 115 N. E. 1036; *State vs. City of St. Josepsburg*, 50 Vt. 332; *Coluse County vs. Jenning County*, 117 Cal. 434.

It should also be noted that such suits by one subdivision against the other should be brought within the six-year statutory period as provided in Section 11222, General Code, which provides:

"An action upon a contract not in writing, express or implied, or upon a liability created by statute other than a forfeiture or penalty, shall be brought within six years after the cause thereof accrued."

It was stated in my opinion to be found in Opinions of the Attorney General for 1933, Vol. III, page 1728 at page 1733:

"In an action by one political subdivision against another, for money rightfully belonging to the one but wrongfully paid to the other, being in the nature of an action *ex contractu*, the statute of limitations applicable to contracts not in writing will, in my opinion, apply."

Specifically answering your questions, it is my opinion that:

1. When there are errors made by applicants for Motor Vehicle Licenses or the officials taking such applications in the giving of the registration districts and such errors made in one year are not found until the following year or subsequent years, the Registrar of Motor Vehicles in making distribution of the license fees to the various subdivisions is not authorized to use the current year's collection to correct errors of previous years.

2. However, the state examiners of the Bureau of Inspection and Supervision of Public Offices, when proof of the errors is furnished, may make findings in their reports against one registration district in favor of another registration district, and if tax revenue which should have been distributed to a taxing subdivision has been distributed to another subdivision through a mistake of fact, the former subdivision may recover from the latter by an action in the nature of an action for money had and received, the amount which the other subdivision had been so unjustly enriched.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3056.

COUNTY TREASURER—SURETY BOND FOR FIRST TERM NOT
LIABLE FOR ACTS PERFORMED IN SECOND TERM WHEN.

SYLLABUS:

Where a county treasurer is elected for his first term of office and gives a surety bond to the state of Ohio reciting in substance that the condition of the obligation is such that the said county treasurer was elected to such office for a term of two years and until his successor is chosen and qualified, and that if such treasurer shall faithfully perform the duties of his office during the term for which he has been elected as aforesaid then the obligation shall be void, otherwise the same shall remain in full force, and such county treasurer is re-elected for another term, and continues to perform the duties of his office during the second term but fails to give a new bond to the state of Ohio to cover his second term, on or before the statutory time for the beginning of such second term, the surety bond given for his first term of office is not liable for the said treasurer's acts performed after the date of the commencement of his second term of office.

COLUMBUS, OHIO, August 18, 1934.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication which reads as follows: