6168.

MUNICIPAL CORPORATIONS—SEWER RENTAL CHARGES MAY BE CERTIFIED BY CITY TO COUNTY AUDITOR—COLLECTION BY COUNTY TREASURER DISCUSSED.

SYLLABUS:

1. Under the provisions of section 3891-1, General Code, sewer rental charges that have become due and are unpaid may be certified by a city to the county auditor for extension on his tax duplicate, and shall then be collected by the county treasurer in the same manner as other county taxes.

2. A county treasurer may not accept all the taxes charged against a taxpayer's real estate without the payment of the sewer rental charges extended against such real estate on the duplicate of the county auditor.

COLUMBUS, OHIO, October 8, 1936.

HON. A. NEWTON BROWNING, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR: This acknowledges receipt of your recent communication which reads as follows:

> "Under the provisions of Section 3891-1 of the General Code, the City of Washington has certified to the County Auditor for collection certain delinquent sewer rental charges. The section of the statute which you considered in your opinion No. 2636, 1934, relating to water rents seemed to be similar in some respects to the section above mentioned in that said section does not specifically provide that said charges may be certified to the County Auditor for collection through the County Treasurer. I would like to have your opinion therefore upon the following propositions:
>
> 1. May such sewer rental charges be certified to the County Auditor or Treasurer for collection as other taxes under the provisions of section 3891-1 of the General Code or any other provision of the Code.
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> 2. If such charges may be certified for collection in such manner, may a taxpayer pay and the Treasurer accept all the taxes charged against the taxpayer's real estate without the payment of such sewer rental charges in view of the provisions of Section 2655 of the General Code?"

The opinion, No. 2636, 1934, to which you refer in your letter, is reported in Opinions of the Attorney General for 1934, Vol I, page 612, and held as disclosed by the syllabus:

> "There are no statutes in Ohio authorizing either a city to certify its delinquent water rental accounts to the county auditor to be collected in the manner of real estate taxes, or authorizing a county auditor to enter such rental accounts upon the tax list and duplicate of real estate taxes when so certified."

Such opinion reviewed and approved an earlier opinion, reported in Opinions of the Attorney General for 1929, Vol. III, page 1788, wherein it was held, as disclosed by the first paragraph of the 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."

This latter opinion considered and approved another previous opinion, rendered in 1912, and reported in Annual Report of the Attorney General for 1912, Vol. I, page 243.

All of the foregoing opinions carefully discussed the provisions of section 3958, General Code, before determining that there was no authority for the certification of delinquent water rentals to the county auditor by a city, and also no authority for the county auditor to place such charges on the tax duplicate.

Section 3958, General Code, reads as follows:

> "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."

Section 3891-1, General Code, referred to in your communication, states:

> "The council of any city or village which has installed or is installing sewerage, a system of sewerage, sewage pumping

works or sewage treatment or disposal works for public use, may by ordinance establish just and equitable rates or charges of rents to be paid to such city or village for the use of such sewerage, a system of sewerage, sewage pumping works or sewage treatment or disposal works by every person, firm or corporation whose premises are served by a connection to such sewerage, system of sewerage, sewage pumping works or sewage treatment or disposal works. Such charges shall constitute a lien upon the property served by such connection and if not paid when due shall be collected in the same manner as other city and village taxes. The council may change such rates or charges from time to time as may be deemed advisable. Provided, however, that in a municipality operating under a municipal charter the council or other legislative body may establish the schedule of rates herein authorized and provide for its administration by designating the department or officer of the municipality to be charged with the enforcement of the provisions of this act."

A close examination of section 3958, General Code, supra, will show that there is no general authority contained therein for a city to certify delinquent water rentals to the county auditor. Relative to this, the Attorney General in his opinion, reported in the Opinions of the Attorney General for 1929, Vol. III, stated as follows at pages 1789 and 1790;

"In passing, it should be noted that Section 3958, General Code, hereinbefore referred to, which refers to the collection of 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."

See also 17 Ohio Law Abstract, 159, 160.

On the other hand, the language of section 3891-1, General Code, does give unqualified authority for a city to certify delinquent sewer rental charges to the county auditor to be extended by him on the county tax duplicate. The second sentence of the section reads:

> "Such charges shall constitute a lien upon the property served by such connection and if not paid when due *shall be collected in the same manner as other city* and village *taxes.*" (Italics the writer's.)

At the time that section 3891-1, General Code, was enacted in 1923 (110 O. L., 370), sections 3794 and 3795, General Code, were in existence, prescribing how municipal corporation taxes were to be collected. Such sections read at that time as follows:

> "Sec. 3794. On or before the first Monday in July, each year, council shall cause to be certified to the auditor of the county, the rate of taxes levied by it on the real and personal property in the corporation returned on the grand duplicate, who shall place it on the tax list of 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 if he finds that the tax levy so certified to him exceeds the aggregate limit allowed by law, the county auditor shall not place it on the tax list, and the levy for such municipal corporation shall not be valid or collectible against any real or personal property in the corporation. If such levy is in excess of the limit allowed by law, the auditor shall immediately notify the council making it, and within ten days after the receipt of such notification council shall revise its levy so as to bring it within the law."
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> "Sec. 3795. The taxes of the corporation shall be collected by the county treasurer and paid into the treasury of the corporation in the same manner and under the same laws, rules and regulations as are prescribed for the collection and paying over of state and county taxes. The corporation treasurer shall keep a separte account with each fund for which taxes are assessed, which account shall be at all times open to public inspection. Unless expressly otherwise provided by law, all money collected or received on behalf of the corporation shall be promptly deposited in the corporation treasury in the appropriate fund, and the treasurer shall thereupon give notice of such deposit to the auditor or clerk. Unless otherwise provided by law, no money shall be

drawn from the treasury except upon the warrant of the auditor or clerk pursuant to the appropriation by council."

In 1927, the legislature enacted what is known as the uniform budget law, sections 5625-1, et seq., General Code (112 O. L. 391 et seq.). Sections 3794 and 3795, General Code, were repealed by section 40 of this act (112 O. L., 409).

The uniform procedure for collecting municipal corporation taxes is now prescribed by section 5625-3, General Code, and other pertinent provisions of such uniform budget act. Such section 5625-3, General Code, provides, so far as pertinent:

"* * * All taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws, rules and regulations as are prescribed for the assessment and collection of county taxes.* * *"

Thus, it may be seen, in specific answer to your first question, that when section 5625-3, General Code, and other pertinent provisions of the budget law are read with section 3891-1, General Code, there is specific authority for a city to have delinquent sewer rental charges certified to the county auditor, who, in turn, must extend such on his tax duplicate and they shall then be collected by the county treasurer as other county taxes.

Coming now to your second question, section 2655, General Code, which you mention in your communication, as last amended in 1934 (115 O. L., Pt. 2, page 273,) reads:

"No person shall be permitted to pay less than the full amount of *taxes charged and payable for all purposes on real estate,* except only when the collection of a particular tax is legally enjoined. Provided, however, that a person claiming to be the owner of an undivided interest in any real estate may present to the county auditor the recorded evidence of the existence and fractional extent of such interest; and the county auditor may note the existence and extent of such interest, as ascertained by him, on the margin of the tax list in the name of such person and give a certificate thereof to the county treasurer, who shall enter the same on the margin of the tax duplicate; and thereupon it shall be lawful for any person claiming to be entitled to or in any wise interested in such interest to pay, and for the county

treasurer to receive that proportion of the full amount of the taxes charged and payable for all purposes on the real estate affected thereby, which is represented by the fraction expressing the extent of such interest. The payment so made and received shall be entered on the duplicate, shall be credited by the treasurer at the time of the next succeeding settlement of real estate taxes, and shall have the effect of relieving the undivided interest in such real estate, so entered on the margin of the tax list and duplicate, from the lien of the taxes charged thereon against such real estate. Thereafter, in making up the tax list and duplicate the auditor shall enter such interest and the proportional value thereof, separately from the other interest or interests in such land and adjust the value of the latter accordingly." (Italics the writer's.)

The first sentence of the foregoing section is very explicit. It is unnecessary to consider whether or not a sewer rental charge under section 3891-1, General Code, is a tax within the meaning of such word as used in the section. If it is not a tax, in the strict sense of the word, it is at least a special assessment. See Carson v. Brockton Sewerage Commission, 182 U. S. 398, third paragraph of syllabus and page 403 of the opinion. It was held in Opinions of the Attorney General for 1935, Vol. II, page 1208, as disclosed by the fourth paragraph of the syllabus:

"By virtue of section 3655, General Code, county treasurers are not permitted to receive payments of general taxes without at the same time receiving payment of installments of special assessments for public improvements certified to the county treasurer for collection."

At pages 1213 and 1214 of the opinion it is stated:

"You also inquire as to whether or not the provisions of Section 2655 of the General Code are applicable to village assessments. Said section reads in part as follows:

'No person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate, except only when the collection of a particular tax is legally enjoined. * * *'

In the case of State ex, rel. Brown v. Cooper, 123 O. S. 23, it was held as disclosed by the syllabus, as follows:

'3. By virtue of Section 2655, General Code, county treasurers are not permitted to receive payments of general taxes without at the same time receiving payment of installments of special assessments for public improvements certified to the county treasurer for collection.'

In the opinion rendered by my predesessor, to which you refer in your communication, (1932 O. A. G. 4152) it was held that:

'The County Treasurer has no authority to receive payment of general taxes without, at the same time, receiving payment of installments of special assessments as are due, unless the payment of said assessments has been legally enjoined.' "

In the Supreme Court case mentioned in the foregoing opinion, it was stated at page 26:

"This court in a number of cases has declared in unmistakable language that special assessments are 'a mode of taxation,' a' species of tax,' and has made use of the words 'such tax,' and other significant expressions."

Hence, it would seem that delinquent sewer rental charges under section 3891-1, General Code, clearly come within the scope of the word "taxes" as set forth in the first sentence of section 2655, General Code, supra.

I am therefore of the opinion, in specific answer to your second question that a county treasurer may not accept all the taxes charged against a taxpayer's real estate without the payment of the sewer rental charged extended on the duplicate of the county auditor.

Respectfully,

JOHN W. BRICKER,

Attorney General.