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## SYLLABUS :

Under the provisions of Section 727.30, Revised Code, the county treasurer has authority to enforce the collection of municipal assessments in the same manner as state and county taxes, and in accordance therewith actions by the county treasurer pursuant to Section 323.25, Revised Code, or Section 5721.18, Revised Code, would not be barred by the statute of limitations found in Section 2305.07, Revised Code, because, by virtue of Sections 323.28 and 5721.19, Revised Code, respectively, no statute of limitations applies to such actions.

Columbus, Ohio, December 19, 1962

Hon. Everett Burton, Prosecuting Attorney  
Scioto County, Portsmouth, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We will appreciate your opinion with respect to the following:

“In 1929 certain assessments were made by the City of Portsmouth for street and sewer improvements. These special assessments were certified to the Scioto County Auditor and levied in 1929, with the last payment being due in 1944. Among the properties against which the assessments were placed was real estate which had been exempted from taxation because it was church property. The church paid the first year’s installment but no collections have been made since that time. In 1961 the church sold the property to a private individual and it was, therefore, removed from the exempted list and placed on the tax duplicate by the County Auditor. The question we would like your advice upon is, can the County Auditor collect assessments against church exempt property upon which no payments have been made since 1929?”

“We are of the opinion that assessments are chargeable against church exempt property but the law does not seem to be clear as to whether or not actions for the collection of assessments may be barred by the six-year Statute of Limitations provided in Ohio Revised Code Section 2305.07.”

That assessments may be chargeable against tax exempt property is clear in view of the divisions in *Lima v. Cemetery Association*, 42 Ohio St., 128 (1884), in which the syllabus reads as follows:

"1. In a general sense, a tax is an assessment, and an assessment is a tax; but there is a well-recognized distinction between them, an assessment being confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity, and levied with reference to special benefits to the property assessed.

"2. A municipal corporation insisting on the right to impose an assessment, should be able to show that such power has been clearly granted to it by statute; but authority being shown, in general terms, to make the assessment, whoever insists that his property is exempted from the burden will be required to support his claim by a provision equally clear.

"3. An incorporated cemetery association is not relieved from an assessment for a street improvement by a statutory provision exempting its lands from *taxation*, such exemption being regarded as confined to taxes as distinguished from local assessments.

"4. While the lands of an incorporated cemetery association, so far as exempted, cannot be sold to pay an assessment for the improvement of a street, the municipal corporation may enforce the assessment by such remedies as the statute and courts of equity afford."

A municipal corporation has the right to impose assessments for street and sewer improvements pursuant to the power granted to it in Section 727.01, Revised Code. Additional power to impose sewer assessments is found in Section 729.11, Revised Code.

Although church property may be exempted from taxation pursuant to Section 5709.07, Revised Code, I have been unable to find any statutory provision exempting such property from assessments. In *Watterson v. Holliday*, 2 N.P. N.S., 693, 15 O.D. 271 (1904), church property was held liable for assessments, although the court did not express any reasons for the holding. The *Watterson* case was reversed in part on other grounds and later affirmed in 77 Ohio St., 150. I concur in your opinion, therefore, that assessments may be charged against tax-exempt church property. Whether actions to collect such assessments are barred by the six-year statute of limitations, however, is not so clear.

The six-year statute of limitations is found in Section 2305.07, Revised Code, reading as follows:

"Except as provided in section 1302.98 of the Revised Code, *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.”* (Emphasis added)

Section 1302.98, Revised Code, referred to in Section 2305.07, *supra*, pertains to certain contracts under the new uniform commercial code and is not applicable here.

Section 4891, Revised Statutes, which was a predecessor to Section 2305.07, *supra*, was the subject of consideration in *Hartman v. Hunter*, 56 Ohio St., 175 (1897). The syllabus in that case reads as follows:

“1. Exemption from the operation of a statute limiting actions and in its terms containing no exception is a privilege of sovereignty, and it can be asserted only by or on behalf of the sovereign.

“2. A civil action brought by the treasurer of a county under section 1104, Revised Statutes, to enforce assessments for the construction of township ditches, is, by the second clause of section 4891, Revised Statutes, barred in six years after the cause of action arises.”

Section 1104, Revised Statutes, referred to in the *Hartman* case, *supra*, is now found in Sections 323.25 to 323.31, inclusive, Revised Code. Said sections provide for the bringing of civil actions by the county treasurer to enforce liens for either taxes or assessments. See also Section 5721.18, Revised Code.

One year after the decision in the *Hartman* case, the supreme court distinguished the *Hartman* decision in *Wastenev v. Schott*, 58 Ohio St., 410 (1898), by holding that a civil action to enforce a lien for taxes is not barred by the statute of limitations, although a civil action to enforce a lien for assessments might be so barred. In 1902, however, the legislature amended Section 1104, *supra*, to provide: “\* \* \* nor shall any statute of limitations be applicable to any action brought under this section; \* \* \*” 95 Ohio Laws, 93. See present Section 323.28, Revised Code. See also Section 5721.19, Revised Code. Thus, as to causes of action to enforce liens for assessments arising after 1902, no statute of limitations applies. *Cincinnati v. Fogarty*, 13 N.P. N.S., 631, 24 O.D. 534 (1913); Opinion No. 415, Opinions of the Attorney General for 1927, page 724.

Under the provisions of Section 727.30, Revised Code, the county treasurer has authority to enforce the collection of municipal assessments

in the same manner as state and county taxes. In my opinion, therefore, actions by the county treasurer pursuant to Section 323.25, *supra*, or Section 5721.18, *supra*, to enforce the collection of municipal assessments would not be barred by the statute of limitations found in Section 2305.07, *supra*, because, by virtue of Sections 323.28 and 5721.19, *supra*, respectively, no statute of limitations applies to such actions.

While the foregoing opinion answers your specific question regarding the statute of limitations, there is another problem which should be brought to your attention.

The case of *Bernhard v. O'Brien*, 97 Ohio App., 359 (1953) dealt with a situation similar to the one described by you. There the city of Cincinnati in 1930 and 1931 levied two special assessments for sewer and street improvements. These were certified to the county auditor who placed them upon the general tax list and duplicate. In 1932 collection was enjoined. The county auditor removed these assessments from the tax list and carried them on "tax list cards"; these charges were not put back on the tax list and duplicate until 1952, though the injunction against their collection had been dissolved in 1934. The court, in discussing whether the liens raised against the assessed property continued or were barred by a limitation, stated at pages 365 and 366:

"By express language the lien is created to secure the charges that are found on the 'tax list,' \* \* \*. These sections continue the lien *so long as the tax or assessment is on either the current or general tax list and duplicate or the current forfeiture duplicate without any limitation as to time.*" (Emphasis added)

The court then held that the county auditor, having omitted these charges from the tax lists for more than five years, could not relist them because of the five-year limitation imposed by Section 2593, General Code (now Section 319.40, Revised Code), then reading:

"When the county auditor is satisfied that lots or lands on the tax list or duplicate have not been charged with either the county, township, village, city, or school district tax, he shall charge against it all such omitted tax for the preceding years, not exceeding five years unless in the meantime such lands or lots have changed ownership, in which case only the taxes chargeable since the last change of ownership shall be so charged."

The ground of the decision was that the existence of the lien depended upon whether the assessment was kept on the tax list and duplicate. Since

the assessments had been removed from the tax list and had not appeared on it for over five years, the court considered that it was too late to put them on the tax list, and the lien failed.

The *Bernhard* case, *supra*, differs from the instant case in that the property in the *Bernhard* case was on the tax list and the assessments could have been added thereto, whereas in the instant case the property was on the exempt list. To put the assessments on the tax list in the instant case would have required listing the property on the tax list at a time when the property was exempt from taxation. The *Bernhard* case, therefore, may not be directly in point, but I bring it to your attention so that you may consider it before bringing any action to collect the assessments in the instant case.

It is my opinion, therefore, and you are accordingly advised that under the provisions of Section 727.30, Revised Code, the county treasurer has authority to enforce the collection of municipal assessments in the same manner as state and county taxes, and in accordance therewith actions by the county treasurer pursuant to Section 323.25, Revised Code, or Section 5721.18, Revised Code, would not be barred by the statute of limitations found in Section 2305.07, Revised Code, because, by virtue of Sections 323.28 and 5721.19, Revised Code, respectively, no statute of limitations applies to such actions.

Respectfully,

MARK MCELROY

Attorney General