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CONSERVANCY ACT OF OHIO—MONEYS DERIVED FROM COLLECTION OF ASSESSMENT SHOULD NOT BE INCLUDED TO DETERMINE TOTAL TAX RECEIPTS OF EACH SUBDIVISION OF THE COUNTY FROM THE REAL PROPERTY TAX DUPLICATE — SECTIONS 6828-1 TO 6828-79 G. C. — AMENDED SENATE BILL 362, 96 GENERAL ASSEMBLY.

SYLLABUS:

The Conservancy Act of Ohio (Sections 6828-1 to 6828-79, General Code, both inclusive) provides for the levying of an "assessment". Moneys derived from the collection thereof should not be included in determining the "total tax receipts of each subdivision of the county from the real * * * property tax duplicate" as that term is used in Section 2 of Amended Senate Bill No. 362 of the 96th General Assembly.

Columbus, Ohio, October 29, 1946

Hon. Paul A. Baden, Prosecuting Attorney
Hamilton, Ohio

Dear Sir:

Your request for my opinion reads:

"In Opinion No. 1140, under date of August 10, 1946, you held that the term 'total tax receipts of each subdivision of the county from the real * * * property tax duplicate,' as the same appears in Section 2 of Amended S. B. No. 362 of the 96th General Assembly, does not include moneys derived from the collection of special assessments that appear on said real property tax duplicate.

Butler County is included within the Miami Conservancy District and when the original improvements were made there was a provision in the statute for levying assessments against political subdivisions. These assessments are certified by the city officials to the Budget Commission and are then placed upon the tax duplicate for collection and collected as general taxes. They are, of course, outside the ten mill limitation but form part of the overall tax rate in the political subdivisions. Such levies are made on behalf of Butler County, the city of Hamilton and the City of Middletown.

Will you, therefore, please advise whether or not the moneys derived from the collection of these assessments should be included in the computation required to be made pursuant to the section above referred to?"

Attention will first be directed to Amended Senate Bill No. 362 of the 96th General Assembly which was signed by the Governor and filed in the office of the Secretary of State on July 15, 1946. Section 2 thereof provides inter alia :

“The county auditor shall lay before the budget commission, when so convened, the certificate of the board of tax appeals, and the budget commission shall thereupon apportion the estimated amount of the undivided local government fund of the county to and among the several subdivisions, as defined in section 5546-18 of the General Code, in the ratio which the total tax receipts of each subdivision of the county from the real, public utility and tangible property tax duplicate during the previous five years bears to the aggregate tax receipts of all such subdivisions from the real, public utility and tangible property tax duplicates during the previous five years.”

I turn now to the Conservancy Act of Ohio (Sections 6828-1 to 6828-79, General Code, both inclusive) which was heretofore enacted by the 80th General Assembly and became effective as an emergency law in February, 1914 (114 O. L. 13). In considering the provisions of said act the court held in *The County of Miami, et al., v. The City of Dayton, et al.*, 92 O. S. 215 (decided June 4, 1915) as disclosed by the fifth paragraph of the syllabus of said case, as follows :

“5. While the letter of the act uses the word ‘tax’ in a general sense, the whole act, its spirit, its subject-matter and its actual operation, taken together, make it manifest that the word ‘tax’ as therein used is special and local and what is known under the laws of Ohio as an ‘assessment.’ ”

Subsequent to the date of the above decision said Conservancy Act was amended. In this connection I am cognizant of the fact your letter clearly indicates that the assessments against the political subdivisions therein mentioned were made pursuant to the act as originally enacted. However, an examination of said act as presently in force and effect leads to the conclusion that no change has been made therein that would now make inapplicable the decision of our Supreme Court in the respect above set forth.

In my opinion No. 1140 dated August 10, 1946, to which you have made reference in your letter, I discussed in some detail the distinction between an “assessment” and a “tax” as those terms are generally under-

stood when used in legislation. It seems obvious that the manner in which assessments, which were heretofore made pursuant to the provisions of the Conservancy Act of this state, are to be collected cannot convert such assessments into taxes for the purpose of the computation that is required to be made under the terms of the senate bill heretofore mentioned.

In specific answer to your inquiry it is my opinion that :

The Conservancy Act of Ohio (Sections 6828-1 to 6828-79, General Code, both inclusive) provides for the levying of an "assessment." Moneys derived from the collection thereof should not be included in determining the "total tax receipts of each subdivision of the county from the real * * * property tax duplicate" as that term is used in Section 2 of Amended Senate Bill No. 362 of the 96th General Assembly.

Respectfully,

HUGH S. JENKINS
Attorney General