

2274.

APPROVAL, CONTRACT FOR HIGHWAY IMPROVEMENT IN RICHLAND COUNTY, OHIO.

COLUMBUS, OHIO, February 9, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval the following contract:

Section Mansfield (Part)

State Highway No. 287.

Richland County, Ohio.

Finding said contract correct as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2275.

APPROVAL, NOTES OF YORK TOWNSHIP RURAL SCHOOL DISTRICT, ATHENS COUNTY, OHIO—\$3,000.00.

COLUMBUS, OHIO, February 9, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2276.

DELINQUENT TAXES—UNDER AMENDED SENATE BILL NO. 42 TAXPAYER MAY PAY TAXES PRIOR TO ACTUAL DATE OF SETTLEMENT BETWEEN COUNTY AUDITOR AND COUNTY TREASURER.

SYLLABUS:

Section 1 of Amended Senate Bill No. 42 (115 O. L. 161) authorizes the taxpayer to take advantage of the provisions of such act at any time prior to the actual date of the settlement between the county auditor and the county treasurer, of the real estate taxes collected by the county treasurer for the first half of the tax year 1933, even though the date of such settlement is later than February 15, 1934.

COLUMBUS, OHIO, February 10, 1934.

The Tax Commission of Ohio, Columbus, Ohio.

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

“We request your immediate opinion relative to the provisions of the Whittemore Bill, (Amended Senate Bill No. 42) enacted at the regular session of the 90th General Assembly.

The act provides that the taxpayer must take advantage of the provisions of the act on or before the February settlement, 1934. Some controversy has arisen concerning the meaning of the language of the bill. The prevailing views are,

(1) That the February settlement referred to, means the time of actual settlement.

(2) That the February settlement means in fact February, and that those persons who desire to take advantage of the bill must act before the statutory time fixed for the February settlement."

Amended Senate Bill No. 42, referred to in your inquiry, is that act found in 115 O. L., 161, the first section of which reads:

"Any person, firm or corporation charged with or legally authorized to pay real property taxes and assessments which have become delinquent at or prior to the August settlement in the year 1932, *may at any time prior to the February settlement in the year 1934*, elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state to the contrary notwithstanding. Provided, however, that no such person shall be entitled to make such election unless all taxes, assessments and penalties for the year 1932 and/or the first half of the year 1933 then due and payable have been paid."

The time of the February settlement of real estate taxes is fixed by Sections 2596 and 2683, General Code, as "on or before the fifteenth day of February, in each year."

Your question is therefore one of the statutory construction of Section 1 of Amended Senate Bill No. 42, in the light of the language contained in Sections 2596 and 2683, General Code.

In Section 126 of Black on Interpretation of Laws, it is stated that:

"When a statute specifies the time at or within which an act is to be done by a public officer or body, it is generally held to be directory only as to the time, and not mandatory, unless time is of the essence of the thing to be done, or the language of the statute contains negative words, or shows that the designation of the time was intended as a limitation of power, authority or right."

The courts of our state have on several occasions referred to and applied this rule. Thus, in the case of *State ex rel. Mittendorf vs. Hensing*, 10 O. App. 205, the court had under construction an apparent mandate of the statute Section 4748, General Code, to fill a vacancy in a board of education "at its next regular or special meeting." The court held in such case that such statute was mandatory as to the filling of the vacancy but was merely directory as to the time of the filling of the vacancy and that if the board of education did not fill such vacancy at its next regular or special meeting it should do so at a subsequent regular or special meeting.

In the case of *In re. Chagrin Falls*, 91 O. S. 308, the court had under construction a statute which apparently required the opening and closing of the voting polls at a definite hour. Yet the court held in the first paragraph of the syllabus, as follows:

“The provision of a statute fixing the time for opening and closing the polls at an election is directory and not mandatory.”

See also *Fry vs. Booth*, 19 O. S. 25; 26 American & English Encyclopaedia of Law, 2d Ed. 689; 2 Lewis' Sutherland Statutory Construction, 2d Ed. Sec. 611. Such rule is well summarized in Black on Interpretation of Laws, Section 127:

“Statutory provisions regulating official action in matters of form are to be regarded as merely directory where they are designed only to promote order and convenience in the discharge of public business, and where the public interests or private rights do not depend upon their strict observance.”

In Section 128, the same author applies the rule with reference to the collection and assessment of taxes, as follows:

“In statutes regulating the assessment and collection of taxes, those provisions which are designed to secure equality of taxation and are intended for the benefit and protection of the taxpayer are to be construed as mandatory; such as are meant only for the guidance of officers and to secure uniformity, system and despatch in the conduct of the proceedings may be considered as directory.”

In view of the language as used in Sections 2596 and 2683, General Code, it would appear that the date, February 15th was used to secure uniformity, system and despatch in the conduct of the collection and distribution of taxes. If such be the correct interpretation of such section it would appear that such settlement between the county auditor and the county treasurer could be made at any time after such date if it were not made on or prior to such date.

The language of Section 1 of Amended Senate Bill No. 42 is that taxes may be paid without penalty “at any time prior to the February settlement in the year 1934” and not at the time fixed by statute for such settlement.

It would therefore appear to me that the language of such Section 1 would permit such taxes to be paid without penalty if such payment were made at any time prior to the actual settlement between the county treasurer and the county auditor of the real estate taxes collected by the county treasurer at the end of his collection period for the first half of the tax year 1933. If such is not the proper construction considerable embarrassment might arise not only to the county treasurer and the county auditor, but to the taxpayer as well when the county commissioners have extended the time of payment of taxes to January 20th and thereafter the Tax Commission of Ohio by reason of the fact that the delivery of the duplicate to the county treasurer was delayed, extended the time for the payment of such tax beyond February 15, 1934. It would appear to be somewhat absurd for the legislature to require the county treasurer and county auditor to make their settlements for such taxes prior to the time which it has already authorized for the payment of taxes to be extended.

Specifically answering your inquiry it is my opinion that Section 1 of Amended Senate Bill No. 42 (115 O. L. 161) authorizes the taxpayer to take advantage of the provisions of such act at any time prior to the actual date of the settlement between the county auditor and the county treasurer of the real estate taxes

collected by the county treasurer for the first half of the tax year 1933, even though the date of such settlement is later than February 15, 1934.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2277.

LIQUOR CONTROL ACT—DIRECTOR OF DEPARTMENT OF LIQUOR CONTROL HAS SOLE AUTHORITY TO ENTER INTO CONTRACTS FOR PURCHASE OF INTOXICATING LIQUOR AND OTHER NECESSARY EQUIPMENT FOR STATE LIQUOR STORES.

SYLLABUS:

By virtue of the provisions of the Liquor Control Act, the Director of the Department of Liquor Control has sole authority to enter into contracts on behalf of the Department for the purchase of intoxicating liquor and other necessary equipment for state liquor stores. Such purchases should be made pursuant to regulations that may be adopted by the Board under authority of section 6064-3, General Code.

COLUMBUS, OHIO, February 10, 1934.

Board of Liquor Control, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter of recent date which reads in part as follows:

“The Board desires to know whether under the provisions of the Liquor Control Act the Director of this Department has sole authority to enter into contracts in behalf of the Department or whether the Board of Liquor Control has co-ordinate or supervisory power with the Director in the matter of entering into liquor and other contracts.”

Section 6064-7, General Code, reads:

“The director of liquor control shall be the executive secretary of the board of liquor control. Subject only to the powers and duties of the board as set forth in section 3 of this act, all the powers and duties by this act vested in or imposed upon the department shall be exercised and performed by the director, who shall administer the affairs of the department, excepting as otherwise specified in this act.”

Section 6064-8, General Code, provides in part as follows:

“The department of liquor control shall have all the powers and duties vested in and imposed upon a department of state administration by sections 154-17, 154-18, 154-19 and 154-22 of the General Code; and all the powers of the board of liquor control which shall be exercised by the board in the name of the department. In addition thereto, the department shall have and exercise the following powers:

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