

4186.

TAX VALUATION COMPLAINTS—AUTHORITY OF COUNTY COMMISSIONERS TO EXTEND TAX PAYING DATE TO JANUARY 20—COUNTY AUDITOR UNAUTHORIZED TO RECEIVE COMPLAINTS AFTER THAT DATE.

*SYLLABUS:*

*Where the board of county commissioners of a county, acting under the authority of section 2657, General Code, extended the time for the payment of taxes for the first half of 1931 taxes from December 20, 1931, to January 20, 1932, the county auditor is not authorized to accept and file complaints as to the assessment or valuation of property, after January 20, 1932, notwithstanding the fact that the county treasurer accepts the payment of taxes after said date.*

COLUMBUS, OHIO, March 26, 1932.

HON. CHARLES D. DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you which reads as follows:

“I would very much appreciate your opinion upon the following question:—

All re-appraisal work was completed in this County and all tax duplicates properly prepared before December 20, 1931.

The Commissioners extended the time for payment of taxes until January 20, 1932. The Treasurer, without authority from the Tax Commission, stated he would receive taxes, without penalties thereon, until February 1, 1932. The Auditor refused to receive any complaints as to the valuation of property after January 20, 1932. Is the Auditor compelled to receive these complaints until February 1, 1932?

A recent letter of the Tax Commission stated that when the time had been extended for the payment of taxes, due to the delay caused by re-appraisal, the Auditor should receive complaints up to the extended time for tax payments. This, of course, does not apply to the situation in this county.

The Opinion of the Attorney General No. 61 for the year 1927 is interesting; but does not, in my opinion, exactly apply.

It is the contention of the Auditor of this County that the Treasurer had no legal right to extend the payment, and therefore he has no legal right to extend the time for the receiving of complaints.

Your attention to this matter will be appreciated by me.”

The question presented in your communication is as to the time when the county auditor may receive complaints against any valuation or assessment of property for the current year. Section 5609, General Code, as far as the same is pertinent to the question here presented, provides as follows:

“Complaint against any valuation or assessment as the same appears upon the tax duplicate of the then current year may be filed on or before the time limited for payment of taxes for the first half year. Any tax-

payer may file such complaint as to the valuation or assessment of his own or another's real property, and the county commissioners, the prosecuting attorney, county treasurer, or any board of township trustees, any board of education, mayor or council of any municipal corporation, in the county shall have the right to file such complaint. The county auditor shall lay before the county board of revision all complaints filed with him."

This section, as will be noted, provides that complaint against any valuation or assessment, as the same appears upon the tax duplicate of the then current year, may be filed on or before the time limited for the payment of taxes for the first half year. By section 2649, General Code, as amended, 114 O. L. 729, it is provided that the office of the county treasurer shall be kept open for the collection of real property taxes and assessments and public utility property taxes from the time of delivery of the duplicate to the treasurer until the 21st day of December and from the first day of April until the 21st day of June; and by section 2653, General Code, as amended, 114 O. L. 730, it is provided that each person charged with real property taxes and assessments of public utility property taxes on a tax duplicate in the hands of the county treasurer may pay the full amount thereof on or before the 20th day of December, or one-half thereof before such date, and the remaining half thereof on or before the 20th day of June next ensuing.

The question presented by you relates to a situation where the time for the payment of taxes prescribed in the sections of the General Code, above noted, has been extended, first by action of the board of county commissioners of the county, and subsequently by the voluntary action of the treasurer.

Section 2657, General Code, as the same read prior to its amendment in Amended Senate Bill No. 323, enacted by the 89th General Assembly, 114 O. L. 730, is as follows:

"The county commissioners of any county by resolution spread upon their journal may extend the time of payment of taxes from June twentieth to July twentieth of the same year and from December twentieth to January twentieth of the following year.

In all cases where the first half of the personal property taxes has not been paid on the twentieth day of December or on the twentieth day of the following January if the time has been so extended, the whole amount of personal property taxes for the current year, together with a penalty of ten per cent. thereon, shall be due and delinquent, the penalty shall be added by the county auditor, and the taxes and penalty forthwith collected by the county treasurer.

When the first half of the personal property taxes charged on the tax duplicate has been paid promptly, but the remainder of such tax is not paid on or before the twentieth day of June or the twentieth day of July if the time has been so extended, a penalty of ten per cent. thereon shall be added by the county auditor, and the taxes and penalty forthwith collected by the county treasurer."

This section in the act of the 89th General Assembly, above referred to, was amended so as to provide that the county commissioners of any county by resolution spread upon their journal may extend the time of payment of taxes for not more than thirty days after the time fixed by law. As amended in said act, this section further provides in part as follows:

"The tax commission of Ohio may further extend the time of payment of taxes in any county in case of an emergency unavoidably delaying the delivery of duplicates for the collection of taxes. Such extension shall be for such time as the commission may fix in its order."

It appears from the provisions of section 5 of Amended Senate Bill No. 323 (114 O. L. 777), in and by which act section 2657 of the General Code was amended, as above noted, that such amendment is not effective for the years 1931 and 1932; and it does not appear from your communication that the tax commission presumed to take any action extending the time of payment of taxes in Warren County beyond the time fixed by the order of the board of county commissioners.

So far as the same is applicable to the question here presented, section 5 of Amended Senate Bill No. 323 provides as follows:

"With respect to the amendment of Section 2657 of the General Code, this act shall take effect on the first day of January, 1933; but whenever, in the years 1931 or 1932, the county commissioners of any county shall, pursuant to said section as now in force, extend the time for the payment of taxes, the office of the county treasurer of such county shall be closed for the payment of taxes at the end of the time for such payment as so extended, any provision of the General Code to the contrary notwithstanding."

It follows from the provisions of said act, above quoted, that there was no statutory authority for the extension of the time for the payment of taxes in said county beyond January 20, 1932, the time fixed by the county commissioners in the order referred to in your communication.

Inasmuch as under the provisions of Section 5609, General Code, above quoted, complaints against any valuation or assessment of property upon the tax duplicate for the current year are to be filed on or before the time limited for the payment of taxes for the first half year, the county auditor, on the facts stated in your communication has no authority to receive any complaints of this kind after January 20, 1932.

The opinion of this office referred to above, Opinions of the Attorney General for 1927, Vol. I, page 82, related to a situation growing out of the 1925 appraisalment of real property. In this opinion it was held that where an extension of time had been granted within which to complete the 1925 appraisalment of real property required under section 5548, General Code, such extension automatically extended the time within which the duties required of the board of revision under section 5606 are to be performed; and that where such extension had been granted, the time limited for payment of taxes for the first half year is not necessarily December 20th or January 20th, but may be extended by the county commissioners to the February settlement; and that the time for filing complaints with the county auditor for action by the county board of revision would then be automatically likewise extended.

There is nothing in the facts presented in your communication which require me to give any effect to the former opinion of this office, above referred to; and by reason of the mandatory provisions of section 5 of Amended Senate Bill No. 323, above quoted, and of the applicable provisions of section 5609, General Code, I am of the opinion, as above stated, that the county auditor of said county had

no authority to accept complaints as to the valuation or assessment of property on the current tax duplicate after January 20, 1932.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

4187.

MUNICIPALLY OWNED UTILITIES—MAY CONTRIBUTE TO COST OF CONSTRUCTING CITY OFFICE BUILDING—LIMITED TO AMOUNT NECESSARY TO CONSTRUCT PART TO BE USED BY SUCH UTILITY.

SYLLABUS:

*Municipally owned public utilities may pay a portion of the cost of the construction of a city office building which is to be used in part by such utilities, provided that the amount paid by each utility is no more than is necessary to construct that part of the building which is to be used by such utility.*

COLUMBUS, OHIO, March 26, 1932.

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

GENTLEMEN:—I am in receipt of your communication which reads as follows:

“A city in Ohio owns and operates three utilities, to-wit:

A gas distribution system, water works and electric light works.

This city desires to construct a city office building to house all departments of the city government, including the offices of the gas, water and electric departments. The contemplated building would provide space for the municipal court, city prison and police department. The administrative heads perform services for the utilities, as well as governmental duties. One office force is maintained for the gas, water and electric departments. It is planned that the utilities would contribute sixty percent of the cost of the building and the city government the remaining forty percent.

In an opinion of your predecessor, No. 2381, page 1797 of the 1928 Opinions, it was held—

‘A municipality may, by proper legislation, use surplus water revenue for the purpose of constructing that portion of a city office building to be dedicated and used for water works office purposes.’

At the request of the city solicitor, we are submitting the following question for your opinion:

Can the city and the municipally owned utilities each contribute their proportional share of the cost and construct a city office building to be used by all joint utilities, designating what portion of the building to be constructed is to be dedicated, devoted and owned by each utility and the city government?

If the utilities can unite with the city and pay their proportionate