

not less than one-fifth of the total principal amount of the taxes, assessments and penalties so charged, unless the collection of a particular tax has been legally enjoined, together with the full amount of interest, if any, accrued on the unpaid portion of the principal at the time of the payment of such installment, unless at any payment period, less than one-fifth of such total principal amount remains unpaid, in which event the entire balance, together with interest shall be paid; the last of such installments shall also include the costs of certification of such land as delinquent, as prescribed by section 5713 of the General Code."

This section makes provision for the payment of taxes in installments and I do not believe the meaning of the language used by the legislature could by any possible means of interpretation be held to include the payment of the purchase price in a foreclosure sale for taxes in installments.

I am therefore of the opinion that:

1. Section 2672 of the General Code, relating to the payment of delinquent taxes in installments has no application to the payment of the purchase price of property sold upon tax foreclosure sale.

2. There is no statutory authorization or permission for the payment of the purchase price in such sales in installments as described in Section 2672 of the General Code, for the payment of taxes.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4009.

IMMUNITY CERTIFICATE — BACK TAXES — TAX COMMISSION MUST
ISSUE TO PERSON MAKING HONEST PERSONAL TAX FOR 1932.
SYLLABUS:

If a person against whom the county auditor in the year 1931 has made an assessment for personal property taxes for the years 1926 to 1931, inclusive, whether such assessment is made upon the investigation and report of the county board of revision or otherwise, makes application to the tax commission prior to the first day of April 1932, for a certificate of immunity with respect to such back taxes as provided for in section 5398-1, General Code, as enacted in Amended Senate Bill No. 323, 114 O. L. 746, and if the tax commission on such application finds that such person in the year 1932 has made a personal tax return and has therein fully and in good faith listed all the taxable property which he is then required to list, it will be the mandatory duty of the tax commission to issue such immunity certificate.

COLUMBUS, OHIO, January 29, 1932.

HON. J. D. SEARS, *Prosecuting Attorney, Bucyrus, Ohio.*

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

"I respectfully submit for the opinion of your office, the following facts:

Pursuant to Section _____ of the General Code of Ohio, County Auditor, together with the other members of the Board of Review, in-

vestigated the personal property tax liability of an individual during this last month. The Board of Tax Review made a finding that the individual was liable to pay an assessment for his failure to file a complete return for the years 1926 to 1931, both inclusive.

The individual has now exercised his right of appeal to the Ohio Tax Commission. It may be that after the decision on his appeal by the Tax Commission, he will prosecute a further appeal to the Court of Common Pleas, which is his statutory right. * * *.

I am cognizant of the provisions in the first two paragraphs of Section 5398-1, found in this new intangible tax law:

'A person, or his legal representatives, called before the county auditor under the preceding section, or any person claiming to have made a return in the year 1932, may apply to the tax commission of Ohio for a certificate of immunity from examination under such section and from criminal prosecution.

'Upon such application the commission shall proceed to determine whether or not the person whose returns are proposed to be investigated by the county auditor made a return in the year 1932 and fully and in good faith listed therein the taxable property required by the law in force in said year to be so listed; and if it finds such to be the fact shall issue its certificate to that effect. The commission may order the county auditor to stay proceedings on the examination commenced by him pending the investigation which the commission is required thereby to make; but in the event of such stay the commission shall, if it refuses the application for such certificate, forthwith notify the county auditor of its action in the premises.'

I am confident that the individual taxpayer will apply to the Ohio Tax Commission under the provisions of the above quoted section for a certificate of immunity to be relieved from the assessment of personal property tax made for the years 1926-1931, inclusive.

I desire your opinion if it is the mandatory duty of the Tax Commission to issue the Certificate of immunity provided for in the above-quoted section, if the Commission finds that the individual tax payer for the year 1932 made a personal property tax return 'fully and in good faith.'

It seems to me that if the duty is mandatory upon the Ohio Tax Commission, this tax payer will make a full and bonafide return of his personal property for the year 1932, and then immediately apply to the Commission for a certificate of immunity and thereby be exonerated from all liability under the aforesaid assessment.

Is it your opinion that the section should bear this construction?"

You state in your communication that the county auditor, together with the other members of the county board of revision of your county, investigated the personal property tax liability of a certain individual, and that upon such investigation the county board of revision made an assessment of personal property taxes for the years 1926 to 1931, inclusive, predicated upon a finding that such person had not filed a complete return of personal property for purposes of taxation for said years.

However, I assume that the only authority exercised by the county board of revision in this matter was that conferred upon it by the then existing provisions

of section 5604, General Code. This section, at the time of the action of the county board of revision, referred to in your communication, provided as follows:

"When the county board of revision discovers or has its attention called to the fact that, in a current year or in any year during the five years next preceding, any taxable land, building, structure, improvement, minerals, mineral rights, personal property or other taxable property in the county, has escaped taxation or been listed for taxation at less than its true value in money, the board may investigate the same and report to the county auditor all facts and information in its possession relating to the same. The county auditor shall make such inquiries and corrections as he is authorized and required by law to make in other cases in which real and personal property has escaped taxation, or has been improperly listed or valued for taxation."

It may be assumed, therefore, that after this matter had been investigated by the county board of revision the actual assessment of back taxes against the individual referred to by you was made by the county auditor under the authority conferred upon him by the then provisions of section 5398, General Code. This section, as well as section 5399, General Code, authorized the county auditor to make an assessment of back taxes against any person liable therefor, for a period not exceeding five years next preceding the year in which such assessment was made.

This brings us to a consideration of the so-called immunity provisions of the new tax law found in sections 5398 and 5398-1, General Code, as amended in said act (Amended Senate Bill No. 323, 114 O. L. 745, 746). These sections read as follows:

Section 5398.

"If a county auditor believes or has reason to believe that a person, required by the law then in force to list property or make a return thereof for taxation in any prior year or years beginning with 1926 and ending with 1931, has made a false return, or has evaded making a return, or has withheld from, or failed to include in such return any property, either tangible or intangible, required by the law in force in any such year or years to be listed for taxation, he shall call such person before him for examination, by giving notice in writing of the time and place when such examination shall be had, to the person, if living, or to his legal representative, if he be dead. Such notice may be served either personally or by registered letter directed and mailed to the last known post office address of the person sought to be served. Unless the person so notified produces a certificate of the tax commission of Ohio to the effect that the person whose returns are proposed to be examined, made a return in the year 1932 and fully and in good faith listed therein all the taxable property required by the law in force in the year 1932 to be so listed, the auditor shall proceed with the examination. It may be adjourned to any other time or place if the same becomes necessary for the furtherance of the investigations; but if the certificate herein provided for is produced, the auditor shall not be authorized to proceed further therein. The auditor may examine under oath the person whose returns are being investigated. He may issue subpoenas and compel the production of books and papers and the attendance of all persons whom

he thinks have knowledge of the property which was or should have been included in such returns and may examine such person on oath with regard thereto. If, upon such hearing, or examination, the auditor finds that the person so required by law to list property or to make a return thereof for taxation, has made a false return or has evaded making a return, or has withheld from or failed to include in, such return or statement any taxable property, either tangible or intangible, required by law to be listed, he shall determine as nearly as practicable the true amount or value of the personal property, moneys, credits and investments which such person failed to return or upon which he should have been, but was not, taxed for the year 1926, or for any year or years subsequent thereto up to and including the year 1931.

He shall assess the sum so omitted for any of said years at the rate of taxation belonging to such year and enter the amount accordingly on the proper tax list in his office, giving a certificate therefor to the county treasurer who shall collect it as other taxes.

To the amount so ascertained for any of said years he shall add fifty per cent., assess the omitted sum so increased by said penalty at the rate of taxation belonging to such year, and accordingly enter the amount on the proper tax list in his office, giving a certificate therefor to the county treasurer who shall collect it as other taxes.

If the auditor finds that the error or omission was made without intention to mislead, deceive or defraud for the purpose of evading taxation on the part of the person whose duty it was to make the return, he may remit any penalty for such year, but no such penalty shall be remitted unless such person shall first pay to the county all taxes lawfully due and payable within sixty days after the amount of said lawful taxes are determined and placed on the tax list.

The fees of witnesses, the costs of service of notices and subpoenas and the other necessary expenses incurred by the auditor under this section shall be allowed by him and paid on his order out of the county treasury.

No person shall be excused from testifying or from producing accounts, books and papers in any proceeding under this section on the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture, for, or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; but no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying. The provisions of this section shall be liberally construed so as to secure the payment by each person of all taxes to which he is lawfully liable.

No court shall enjoin the auditor or treasurer from proceeding to assess or collect tax or penalty hereunder, for or on account of any irregularities of informalities in the procedure, under this section, unless it shall further be made to appear that the property sought to be taxed was not taxable against the person sought to be charged or had been correctly returned by him; or that such person has made a return in the year 1932 and has fully and in good faith listed therein all the taxable property required by the law in force in the year 1932 to be so listed."

Section 5398-1.

"A person, or his legal representatives, called before the county

auditor under the preceding section, or any person claiming to have made a return in the year 1932, may apply to the tax commission of Ohio for a certificate of immunity from examination under such section and from criminal prosecution.

Upon such application the commission shall proceed to determine whether or not the person whose returns are proposed to be investigated by the county auditor made a return in the year 1932 and fully and in good faith listed therein the taxable property required by the law in force in said year to be so listed; and if it finds such to be the fact shall issue its certificate to that effect. The commission may order the county auditor to stay proceedings on the examination commenced by him pending the investigation which the commission is required thereby to make; but in the event of such stay the commission shall, if it refuses the application for such certificate, forthwith notify the county auditor of its action in the premises.

Such certificate shall constitute a defense in any criminal prosecution for failure to list any personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise for taxation in any year prior to the year 1932, or for making false returns of any such property in any such year, or for perjury in making returns of any such property in any such year."

It will be noted that Section 5398, General Code, as amended in the act above referred to, provides that if upon hearing and examination conducted in the manner provided by said section, the county auditor finds a person required by law to list property or to make a return thereof for taxation, has made a false return or has evaded making a return, or has withheld from or failed to include in such return or statement any taxable property, either tangible or intangible, required by law to be listed, such county auditor shall determine as nearly as practicable the true amount or value of the personal property, moneys, credits and investments which such person failed to return or upon which he should have been, but was not, taxed for the year 1926, or for any year or years subsequent thereto up to and including the year 1931; and that he shall assess taxes on the value of the property so omitted during such years and enter the amount of such taxes in the proper tax list in his office, and give a certificate thereof to the county treasurer. This section further provides, however, that such hearing shall not be had or such back taxes assessed against a person who produces a certificate of the tax commission of Ohio to the effect that the person whose returns are proposed to be examined made a tax return in the year 1932 and fully and in good faith listed therein all the taxable property required by the law in force in the year 1932 to be listed in such return. Section 5398-1, General Code, authorizes any person whose liability for back taxes is being investigated by the county auditor under the authority conferred upon such officer by section 5398, General Code, to make application to the tax commission for a certificate of immunity from such examination. This section further provides that upon such application the tax commission shall proceed to determine whether or not the person whose returns are proposed to be investigated by the county auditor made a return in the year 1932 and fully and in good faith listed therein the taxable property required by the law in force in said year to be listed; and that if such commission finds such to be the fact it shall issue its certificate to that effect. By this section it is further provided that such certificate shall constitute a defense

in any criminal prosecution for failure to list any personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise for taxation in any year prior to the year 1932, or for making false returns of any such property in any such year, or for perjury in making returns of any such property in any such year.

It is not necessary for the purposes of your inquiry to discuss the question whether sections 5398 and 5398-1, General Code, as amended in Amended Senate Bill No. 323, are laws providing for tax levies or are so related to other sections of the act providing for tax levies that they became effective under section 1d of article II of the state constitution, upon approval by the governor under date of June 29, 1931, and are for that reason applicable to the transaction referred to in your communication, or whether these sections are merely laws relating to taxes and did not go into effect until after the constitutional referendum period, and after the transaction referred to by you. In this connection it is noted that section 5 of said act provides, among other things, as follows:

“Any person or his legal representatives against whom an assessment of omitted property shall have been made in the year 1931 for any prior year or years under sections 5398, 5399, 5401 or 5402 of the General Code, hereby repealed may at any time prior to the first day of April, 1932, apply to the tax commission of Ohio in the manner provided by section 5398-1 of the General Code, hereby enacted, for a certificate of immunity from the collection of any omitted taxes so found. Upon such application the commission shall proceed to make the determination mentioned in said section 5398-1, and if it finds the facts therein mentioned shall issue its certificate to that effect, which shall constitute a defense in any action brought to recover the amount of such omitted taxes, or a cause of action in any proceeding to enjoin the collection thereof; and all proceedings for the collection of omitted taxes assessed in the year 1931 shall be stayed until the first day of June, 1932; or if, in any case application for a certificate of immunity shall have been made to the commission as herein authorized, then all such proceedings for the collection of omitted taxes in such case shall be stayed until ten days after final action by the commission upon such application.”

This section in the language above quoted, specifically provides that any person against whom an assessment was made in the year 1931 under section 5398 or section 5399, General Code, for back taxes for any prior year or years may at any time prior to the first day of April, 1932, apply to the tax commission of Ohio in the manner provided by section 5398-1 of the General Code, above quoted, for a certificate of immunity from the collection of any omitted taxes so found and assessed. Under the provisions of section 5398, General Code, the tax commission of Ohio is not authorized to issue such certificate of immunity unless it finds that the person against whom such back taxes have been assessed has made a tax return in the year 1932 and has fully and in good faith listed therein all the taxable property required by the law in force in the year 1932 to be listed. If, however, the tax commission finds that such person in the year 1932 has made a personal tax return and has therein fully and in good faith listed all the taxable property which he is then required to list, it becomes the mandatory duty of the tax commission to issue such immunity certificate, although the assessment for back taxes against such person may have been made in the year 1931. And it

would make no difference with respect to the question here involved whether such assessment for back taxes was made before or after sections 5398 and 5398-1, General Code, as amended in said act, went into effect.

By way of specific answer to the question presented in your communication, I am of the opinion, therefore, that said question should be answered in the affirmative.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4010.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENT IN RICHLAND
AND WYANDOT COUNTIES.

COLUMBUS, OHIO, January 29, 1932.

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

4011.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND
HERMAN C. WELLER, COLUMBUS, OHIO FOR FLOOR CONSTRUCTION
AROUND NEW SPRINGFIELD BOILER UNIT AND NEW
STEAM GENERATOR FOR POWER PLANT AT OHIO STATE UNIVERSITY,
AT AN EXPENDITURE OF \$3,674.00—SURETY BOND
EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, January 29, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of Ohio State University, Columbus, Ohio, and Herman C. Weller of Columbus, Ohio. This contract covers the construction and completion of Floor Construction around New Springfield Boiler Unit, and completion of New Steam Generator for Power Plant, Ohio State University, in accordance with the form of proposal dated December 29, 1931. Said contract calls for an expenditure of three thousand six hundred and seventy-four dollars (\$3,674.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also shown that the Controlling Board and Emergency Board have approved the expenditure in accordance with section 8 of House Bill No. 624 of the 89th General Assembly. In addition, you have submitted a contract bond upon which the Globe Indemnity Company appears as surety, sufficient in amount to cover the contract price.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as re-