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APPRAISAL OF REALTY—COUNTY AUDITOR MUST ADVERTISE IN ACCORDANCE WITH SECTION 5606, GENERAL CODE—FAILURE TO ADVERTISE VOIDS ALL FURTHER PROCEEDINGS.

SYLLABUS:

1. *Section 5606, General Code, is mandatory in its provisions as to advertisement of appraisements by the county auditor.*

2. *Since such statute is mandatory, unless such advertisement shall have been made in the manner provided therein, all further proceedings for the determination of valuation are void, and no valuation for the purposes of taxation is fixed.*

COLUMBUS, OHIO, January 6, 1932.

HON. DAVID D. PORTER, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR:—Your request for opinion is as follows:

“We are desirous of an opinion from your office giving us some light in reference to the following facts which exist in our county; some time ago the County Auditor acting as chief assessor for the county proceeded to appraise and re-value the property in the following political subdivision, to wit:

City of Wadsworth, 12½% increase on land and buildings. •

Brunswick Township, 10% increase on land.

Medina Village, 10% reduction land and buildings.

The above increases and reductions having been made horizontally.

No notice of the above changes was given to the property owners and the provisions of Section 5606 in reference to advertising were not complied with; in fact no advertisement whatsoever was made in reference to the above increases and reductions nor in reference to any subdivisions in the county and no advertisement to the effect that this tax return was complete and open for public inspection as prescribed in Section 5606.

Some short time ago a complaint was filed, signed by the Board of Trustees of Brunswick Township, addressed to the Board of Revision and asking for a reduction on all of the lands in Brunswick Township and a blanket hearing was had on this complaint. Upon the question being submitted to the Board of Revision, a vote of two to one resulted, in favor of the removal of the said increased valuation.

Since the above action a petition addressed to the Board of Revision has been filed, signed by some 257 land owners of Guilford Township asking for a reduction of taxes on all property in said township.

Having in mind the opinion of Attorney General John G. Price, Volume 2, of Attorney General's opinions for 1921 at page 978, we desire information in reference to the following questions:

1. Was the complaint referred to in reference to Brunswick Township sufficient as to the property described, having described the property as being 'all of the property in Brunswick Township.'

2. What authority would the local board of Revision have for rescinding their former action under the conditions described above.

3. Would a petition such as referred to as having been filed by Guilford Township satisfy the requirements.

4. Would it have a sufficient compliance with Section 5609 if a complaint filed by an individual described therein should contain a description of the property contained in said subdivision by making a transcript of the tax duplicate.

5. Is it necessary when the Auditor acts in the matter of appraisement for him to comply with the provisions of Section 5606 in reference to advertising?

6. What is the effect of a failure to so advertise?"

This being the sixth year after 1925, I presume the appraisement made by your county auditor was made pursuant to the provisions of Section 5548, General Code, which, in so far as applicable to the questions contained in your letter, reads as follows:

"Each county is made the unit for assessing real estate for taxation purposes. The county auditor, in addition to his other duties, shall be the assessor for all the real estate in his county for purposes of taxation, provided that nothing herein shall affect the power conferred upon the tax commission of Ohio in the matter of the valuation and assessment of the property of any public utility

In the year 1925, and in every sixth year thereafter, it shall be the duty of the county auditor to assess all the real estate situated in the county; * * *

Section 5605, General Code, in so far as applicable, reads:

"* * * On the first Monday of July, annually, the county auditor shall lay before the county board of revision the returns of his assessment of any real property for the current year, and such board shall forthwith proceed to revise the assessment and returns of such real property. If the board finds that any tract, lot or parcel of land or any buildings, structures, or improvements thereon, or any minerals therein, or rights thereto have been improperly listed, either in the name of the owner, the description or quantity thereof, or have been incorrectly valued, or have been omitted and not yet valued, it shall make the necessary corrections and shall give to each such tract, lot or parcel of land, or any buildings, structures or improvements thereon or any minerals therein or rights thereto, incorrectly valued or omitted, the true value in money thereof.

The county auditor shall not make up his tax list and duplicate, nor advertise as provided in section 5606 of the General Code, until the board of revision has completed its work under this section and has returned to the auditor all the statements and returns laid before it with the revisions and corrections thereof, as made by it."

Section 5606, General Code, reads:

"When the board of revision has completed its work of equalization and has transmitted the statements and returns to him, the county auditor shall give notice, by advertisement in two newspapers, of opposite politics, published in and of general circulation throughout the county, that the tax statements and returns for the current year have been revised and the valuations completed and are open for public inspection in his office, and that complaints against any valuation or assessment, except the valuations fixed and assessments made by the tax commission of Ohio, will be heard by the county board of revision, stating in the notice the time and place of the meeting of such board. Such advertisements shall be inserted in a conspicuous place in each such newspaper and be published daily for ten days unless there be no daily newspaper published in and of general circulation throughout such county, in which event such advertisement shall be so published once each week for two weeks.

The county auditor shall, upon request, furnish to any person a certificate setting forth the assessment and valuation of any tract, lot or parcel of real estate or any specific personal property, and mail the same, when requested to do so, upon receipt of sufficient postage."

Section 5609, General Code, which provides for the filing of complaints before the board of revision, reads:

"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 taxpayer may file such complaint as to the valuation or assessment of his own or another's 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.

The determination of any such complaint shall relate back to the date when the lien for taxes for the current year attached, or as of which liability for such year was determined, and liability for taxes, and for any penalty for non-payment thereof within the time required by law, shall be based upon the valuation or assessment as finally determined. Each complaint shall state the amount of over-valuation, under-valuation, or illegal valuation, complained of; and the treasurer may accept any amount tendered as taxes upon property concerning which a complaint is then pending, and if such tender is not accepted no penalty shall be assessed because of the non-payment thereof. The acceptance of such tender, however, shall be without prejudice to the claim for taxes upon the balance of the valuation or assessment. A like tender may be made, with like effect, in case of the pendency of any proceeding in court based upon an illegal (alleged) excessive or illegal valuation."

While you do not so state, I assume that the auditor made his appraisalment in the manner provided in the statute, and on the first Monday of July laid be-

fore the board of revision the returns of his assessment of any real property for the current year as provided in Section 5605, General Code, and that such assessment was approved by the board of revision. You do, however, state that the advertisement referred to in Section 5606 General Code, has not been made.

In the case of *Village of Franklin vs. Croll*, 31 O. S., 647, it was held that where the statute provides a method of notice as a step in a proceeding, literal compliance with the provision of the statute as to notice is indispensable to the value of the proceeding, and that it was immaterial in such case that notice was given in another manner more likely to reach the attention of persons so notified.

In the case of *Lessee of Kellogg vs. McLaughlin*, 8 Ohio, 114, the court, in construing an act somewhat similar to Section 5704, where the statute at that time provided that the advertisement should be for four weeks in succession and a record of the copy should be made in the auditor's office along with the certificate of publication, held that unless the advertisement was made in the manner set forth in the statute and a copy and certificate promptly recorded in the auditor's office, the sale of land under such section was invalid.

In the case of *Lessee of Heirs of Thompson vs. Gotham*, 9 Ohio, 170, it was similarly held that when a statute requires the publication of the notice of time when taxes are payable, and there is a failure to make the advertisement in the manner provided in the statute, the taxes were not collectible until such advertisement had been made.

In the case of *Straub vs. Hilker*, 24 O. A., 90, there appears the following:

"All taxes are statutory, and method of collection and enforcement, being part of statute, must be followed."

In that case the county auditor failed to certify the delinquency as required by Chapters 7 and 8 of Title 13, of the Revised Statutes of Ohio (Sections 2864 to 2915) and the court held that by reason of the failure to advertise in the manner set forth in said statutes, any sale of delinquent property held thereunder was void.

The statutes therefore having provided for the publishing of a notice in a certain manner, and since as you state, advertisement in this manner has not been had, I am of the opinion that proceedings taken by the county auditor and tax commission are a nullity, and therefore the valuation can not be legally placed upon the taxing district as a basis for the determination of tax rates or the collection of taxes for the reason that in my opinion these provisions of the statutes with reference to advertising are mandatory.

Being of such opinion that the proceedings for determining for taxation the value of the property in Brunswick Township are incomplete until notice by advertisement as provided by Section 5606, supra, the complaint filed by the township trustees raises a moot question, for the complaint before the board of revision in accordance with Section 5609, supra, presupposes that a valuation for the current year shall already have been fixed, since such complaint must set forth the valuation in dispute as one of the essential elements. If, however, the filing of the complaint by the township trustees was considered as having been filed after notice in some other manner than that provided in the statute, I do not believe the entry of appearance in such manner by the township trustees could be interpreted as a waiver of the advertisement in the manner provided by statute, nor do I believe that the petition addressed to the board of revision, signed by some two hundred and fifty-seven landowners, could be interpreted as effecting

a waiver of notice in the manner provided by this statute, by advertisement in the newspapers, even though the two hundred and fifty-seven landowners were all the owners of real estate in Brunswick Township, for the raising or lowering of the valuation on land might well be interpreted as having a prejudicial effect upon the valuation of other types of taxable property such as buildings or improvements.

It therefore appears that since the county auditor failed to advertise as provided by Section 5606, General Code, the proceedings for the determination of valuation for assessments of the land have proceeded to that stage where the board of revision has completed its work of equalization and has transmitted the statements and returns to the county auditor. The county auditor should therefore now proceed to advertise in the manner provided in Section 5606, *supra*. In such advertisement a date for hearing the complaints should be fixed and when these proceedings have been completed the valuation should again be certified to the Tax Commission for its approval or correction. After that time any claimant may file his complaint under Section 5609 of the General Code, and have a hearing as therein provided.

I am therefore of the opinion that my holding in this matter disposes of your other queries.

In specific answer to your question, it is my opinion that:

1. Section 5606, General Code, is mandatory in its provisions as to advertisement of appraisements by the county auditor.
2. Since such statute is mandatory, unless such advertisement shall have been made in the manner provided therein, all further proceedings for the determination of valuation are void, and no valuation for the purposes of taxation is fixed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

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GASOLINE TAX—AUTHORITY TO USE FOR MAINTENANCE AND REPAIR OF BRIDGES ON COUNTY HIGHWAYS WHEN—DEPUTY COMMISSIONER OF MOTOR VEHICLES LIMITED TO 15 CENT FEE FOR ISSUING MOTOR VEHICLE LICENSES—COUNTY COMMISSIONERS UNAUTHORIZED TO RELEASE CONTROL OF MORTGAGES GIVEN AS SECURITY FOR COUNTY DEPOSITS.

SYLLABUS:

1. *A deputy commissioner of motor vehicles may not charge more than the fifteen cent fee fixed by statute for receiving applications for and issuing motor vehicle licenses.*
2. *The county's share of the proceeds of the gasoline tax arising under Sections 5527 and 5541 of the General Code may be used for the maintenance and repair of bridges on public roads and highways in the county system of highways.*