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LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION HAS NO POWER TO WAIVE OR CANCEL ANY PART OF A SPECIAL ASSESSMENT MADE AGAINST THE REAL PROPERTY OF A BOARD OF EDUCATION WHEN SUCH SPECIAL ASSESSMENT HAS BEEN CERTIFIED TO THE COUNTY AUDITOR—§727.51, R.C.

SYLLABUS:

The legislative authority of a municipal corporation has no power to waive or cancel any part of a special assessment made against the real property of a board of education when such special assessment has been certified to the county auditor pursuant to Section 727.51, Revised Code.

Columbus, Ohio, April 18, 1961

Hon. John D. Sears, Jr., Prosecuting Attorney
Crawford County, Bucyrus, Ohio

Dear Sir:

I have before me your request for my opinion which request reads as follows:

“I respectfully request your opinion as to whether or not special assessments against said estate owned by a board of education, which special assessments were put upon the real estate by a municipality, can be waived and taken off of the real estate so as to enable the board of education to sell said real estate.

“The facts which bring about this question are as follows: The Crestline Exempted School District owns a piece of real estate which is no longer needed for school purposes and which they are willing to sell according to law, however, there is a large amount of special assessments with penalty and interest against said real estate which was assessed by the municipality of Crestline, Ohio.

“If the municipality is willing to forgive and waive the special assessments can they legally do so? Or can they forgive or waive any part thereof such as interest and penalty? If a special assessment is put on against a piece of real estate by the County of Crawford or any other tax authority may the County, if they so desire, or the other tax authority forgive and

waive the special assessment, penalty or interest or any part thereof against the real estate?"

The collection of special assessments which have been made by the legislative authority of a municipal corporation is provided for by statute. Section 727.51, Revised Code, provides in part as follows:

"When any special assessment is made and has been confirmed by the legislative authority of a municipal corporation, and bonds, notes, or certificates of indebtedness of the municipal corporation * * *

"For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes. * * *

It must be assumed at the outset, from the language used in your request, that the particular special assessments here in question have already been certified by the clerk of the legislative authority of the municipal corporation to the county auditor who has placed such assessments upon the tax list, all pursuant to Section 727.51, *supra*. The question presented, then, is whether the legislative authority of a municipal corporation which made a special assessment initially may subsequently waive or cancel such special assessment as it applies to real estate owned by a board of education. Similar questions have been considered by previous attorneys general. In Opinion No. 3718, Opinions of the Attorney General for 1948, page 432, the then attorney general ruled as follows at page 440:

"1. When special assessments have been certified to the county auditor in conformity with the provisions of Section 3892, General Code, there is no authority or power on the part of a city auditor, or of any officer of the municipality, to adjust modify or cancel such assessments.

"2. Neither the city auditor nor any other officer of a municipality is authorized by law to collect special assessments after the same have been certified to the county auditor for collection as other taxes.

"3. A county auditor is without authority in law to cancel or remove special assessments from the tax list upon receipt of a letter from a city auditor, or other municipal officer, wherein the cancellation or removal of such assessments is sought."

The basis for this ruling was found in Section 3892, General Code, the predecessor of Section 727.51, *supra*. The Attorney General reasoned as follows at pages 436 and 437:

“The matter next to be considered is whether the terms of Section 3892, General Code, are mandatory in so far as the same deal with the services to be rendered by the treasurer. And as to that the first branch of the syllabus in *State, ex rel. Brown v. Cooper*, supra, states :

“1. The duty enjoined upon county treasurer by Section 3892, General Code, to collect installments of special assessments upon real estate in the same manner and at the same time as other taxes are collected, is mandatory.’

“It should be readily apparent from the foregoing that Section 3892, General Code, cannot possibly be regarded as conferring upon any city officer the power of authority to adjust, modify or cancel assessments after the same have been certified to the county auditor. Moreover, there is no other section of the General Code that purports to confer any such power. If such right were to exist then it would be difficult to conceive how, as stated by our Supreme Court, the duty on the part of the treasurer is mandatory. * * *”

Specifically excepted, however, from consideration in that opinion was whether the legislative authority of the municipality corporation could do what an officer of the municipality could not do, i.e., waive or cancel a special assessment.

An answer to this latter question may be found in Opinion No. 3601, Opinions of the Attorney General for 1941, page 198. This opinion reads, in part, as follows at pages 200 and 201 :

“From the foregoing it appears that council has the duty of determining whether sewer rentals should be charged and, if so, of setting the rate. At that point the duties of council appear to end. I am unable to find any authority for the making of any corrections by the council other than its right to change the rates or charges from time to time as it deems advisable. There is no authority for the consideration of individual cases. The rates or charges determined by the council must have uniform application so as to apply with equal force to all persons similarly situated.

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“* * * it is my opinion that after delinquent sewer rental charges have been certified by a city to the county auditor for collection under authority of Section 3891-1, General Code, there is no authority for the city through its council or any of its other officials to order the county auditor to strike an item thereof from the general tax list and duplicate for the reason that such item has been erroneously included therein. After delinquent sewer rentals have been entered on the general tax list and dupli-

cate for collection, corrections of clerical errors therein may be made by the county auditor as provided in Section 2589, General Code.”

It would appear, therefore, that if the legislative authority of a municipal corporation or the officers of that corporation have no power to alter or cancel special assessments appearing on the tax lists when the motivation for such alteration or cancellation is the correction of an error, it must necessarily follow that a special assessment on a tax list cannot be waived or cancelled by these same persons when the motivation is apparently only one of good will toward a local school district.

As to whether a special assessment, or any part thereof, made by a county or other tax authority may be waived, I have been unable to find any authority which would alter the conclusion I have reached and its applicability to a county taxing authority.

It is, therefore, my opinion and you are accordingly advised that the legislative authority of a municipal corporation has no power to waive or cancel any part of a special assessment made against the real property of a board of education when such special assessment has been certified to the county auditor pursuant to Section 727.51, Revised Code.

Respectfully,
MARK McELROY
Attorney General