

1377.

APPROVAL, NOTES OF COAL GROVE VILLAGE SCHOOL DISTRICT,
LAWRENCE COUNTY, OHIO—\$11,325.00.

COLUMBUS, OHIO, August 11, 1933.

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

1378.

APPROVAL, NOTES OF ROME SPECIAL RURAL SCHOOL DISTRICT,
LAWRENCE COUNTY, OHIO—\$10,997.00.

COLUMBUS, OHIO, August 11, 1933.

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

1379.

APPROVAL, NOTES OF MILTON RURAL SCHOOL DISTRICT, JACKSON
COUNTY, OHIO—\$4,261.00.

COLUMBUS, OHIO, August 11, 1933.

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

1380.

DELINQUENT TAXES—COUNTY TREASURER UNAUTHORIZED TO
COLLECT REAL ESTATE AND PUBLIC UTILITY PROPERTY
TAXES CONTRARY TO STATUTE—PROCEDURE DISCUSSED.

SYLLABUS:

1. *A county treasurer has no authority to collect real estate and public utility property taxes in any other manner or by any other means than that provided in the statutes.*

2. *When the county treasurer has mailed the tax bills for real estate and public utility property taxes to the taxpayer, has kept his office open for the receipt of payment of such taxes during the times required by sections 2649 and 2657, General Code, and has ascertained that the taxpayer is unable to pay the taxes at such times and reports such fact to the county auditor at the time of the semi-annual or annual settlement between the county treasurer and the county auditor, and the county*

auditor causes such reason to be noted in the marginal column appearing on the tax duplicate, such acts are a compliance with the requirements of the second sentence of section 2596, General Code, by the county auditor and county treasurer.

COLUMBUS, OHIO, August 11, 1933.

HON. PAUL A. BADEN, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication which reads as follows:

“Section 2596 of the General Code as amended June 30, 1931, provides for the settlement by the County Auditor with the Treasurer for real and public utility property taxes and a certification of the delinquent list by the Treasurer. The section further specifically provides as follows:

‘At each August settlement, the auditor shall take from the duplicate previously put into the hands of the treasurer for collection, a list of all such taxes and assessments as the treasurer has been unable to collect, therein describing the property on which such delinquent taxes and assessments are charged as described on such duplicate and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes and assessments could not be collected.’

This was formerly R. S. Section 1045.

In construing this Section the Supreme Court in the case of *Stambaugh vs. Carlin*, 35 O. S. Page 209, at Page 216, states the following:

‘The statement in the affidavit of the treasurer that good reasons existed for returning the lands delinquent was not in compliance with this requirement of the statute. The reasons why the taxes could not be collected were a material part of the list to be verified by the oath of the treasurer. Reasons may have existed which if given or noted would have prevented a sale of the land as delinquent.’

It has not been the custom of the Treasurer in this County to make any special effort to collect taxes on real estate other than mailing out the tax bills before the tax paying time. It would seem, therefore, that the only reason the Treasurer could now give for not collecting the taxes would be that conditions are such that the tax-payers are not able to pay them.

I would like, therefore, to have your opinion on the following questions:

First—Before certifying the list of delinquent taxes to the Auditor, must the Treasurer make some special effort to collect the unpaid taxes other than mailing the tax bills?

Second—In noting the reasons why certain taxes are not paid, would it be sufficient to state that the tax-payer is unable to pay them?

Third—If in some future period these lands are foreclosed and a tax sale held, would the fact that the Treasurer had made a general statement to the effect that the taxes were not collected because the tax-payer was not able to pay them, invalidate such a tax sale?

Fourth—In the event you should decide that this is not a sufficient reason under the statute, what, in your opinion, would be a reason that could be assigned by the Treasurer?”

The language of section 2596, General Code, giving rise to your inquiry is:

“ * * * the auditor shall * * * note thereon in a marginal column the several reasons assigned by the treasurer why such taxes could not be collected.”

Such language is substantially the same as that contained in section 27 of the act of March 23, 1840 (38 O. L. 68, 74), which was under consideration by the court in the case of *Stambaugh vs. Carlin*, cited in your request. The first and second paragraphs of the syllabus of that case read:

“1. Section 27 of the act of March 23, 1840 (1 Curwen, 630), required the treasurer to ‘testify to the correctness’ of the list of lands which were actually delinquent for the non-payment of the taxes charged thereon; hence, a verification that ‘the foregoing is a correct list of lands and town lots *returned* delinquent for the non-payment of taxes charged thereon,’ is not a compliance with the statute; and a sale of lands, made in pursuance of such list, so verified, is unauthorized and void.

2. Where a list of lands returned delinquent, under said act, contained no marginal or other note of the reasons assigned by the treasurer why the taxes on said lands could not be collected, such return was invalid, and did not authorize a return of the lands as delinquent for the non-payment of the taxes charged thereon.”

It should be noted that the court in the *Stambaugh* case does not purport to lay down any rule concerning or specifying what efforts on the part of the county treasurer constitute a valid excuse for the non-collection of the tax before the settlement between the county treasurer and the county auditor. Such case merely lays down the rule that it is mandatory that the tax duplicate contain marginal notations as to the reason why the treasurer could not collect the taxes and assessments before the settlement. The holding in such case is merely a restatement of the law concerning the interpretation of statutes with reference to the collection of taxes or penalties. Such rule is tersely stated in the first paragraph of the syllabus of the case of *Straub vs. Hilker*, 24 O. App. 90, as follows:

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

See also *Caldwell vs. State*, 115 O. S. 458, 460; *Cassidy vs. Ellerhorst*, 110 O. S. 535, 539.

Your inquiries are all directed at the sufficiency of the reasons assigned by the treasurer for his failure to collect the uncollected items returned by the treasurer at his settlement with the county auditor. I assume for the purposes of this opinion that a reason was given by the county treasurer for his failure to collect the items and that such reason was properly noted in the marginal column of the tax duplicate. My opinion herein is specifically limited to the assigned excuses or reasons inferred from your inquiries.

It must be borne in mind that the county treasurer has no authority to collect taxes in any manner other than that provided by statute. The statutes of Ohio provide that the county treasurer shall keep open his office for the receipt of real property and public utility property taxes from the time of the delivery of the duplicate by the county auditor until December 21, and from April 1 to June 21

(section 2649, General Code), or during such further time as may be provided by the board of county commissioners pursuant to the provisions of section 2657, General Code. An examination of the statutes fails to disclose any provisions authorizing the county treasurer to compel the payment of a tax item until such voluntary period of payment shall have expired. In other words, it would appear that the county treasurer has no authority to compel the payment of the first half of the real estate or public utility property tax until after December 20 or January 20, if the time for payment has been extended by the county commissioners, or of the last half of the taxes prior to June 20 or July 20, under like circumstances.

I find some provisions of statute which purport to grant authority to the county treasurer to collect taxes other than on real estate, as such, in a different manner, yet such provisions do not purport to be applicable to real estate or public utility property taxes. I am unable to find any provision of law which would authorize or require the county treasurer to collect real estate taxes, as such, either by court action or by distress prior to his semi-annual or annual settlements with the county auditor. In other words, prior to their having become delinquent, there appears to be no statutory authority for the forcible collection of real estate taxes by the county treasurer.

It should be remembered that at the time of the original enactment of section 2596 the county treasurer had express statutory authority to distrain sufficient of the goods and chattels of the taxpayer to satisfy the tax assessed against him, whether on real or personal property, and had authority to use other methods for the collection of such taxes which have since been removed by the act of the legislature. The last of such acts of the legislature was in the amendment of section 2667 by the 89th General Assembly, which deprived the county treasurer of his authority to institute a court action for the collection of real estate taxes prior to their having been certified delinquent.

There is a presumption with reference to statutory interpretation that a statute does not require a vain, absurd or impossible thing. (See *Moore vs. Given*, 39 O. S. 661, 665.) It would at least be absurd if the statute were to require a county treasurer to attempt to use some illegal methods for the collection of taxes and to set forth on the marginal column of the duplicate the nature of such illegal acts. It would therefore appear that, as to real estate and public utility property tax items reported by the county treasurer to be uncollected at the time of his settlement with the county auditor, the legislative purpose or intent in enacting section 2596 was to require the county treasurer to report at the time of his settlement whether he had pursued the lawful methods for collecting such taxes.

Your first inquiry is as to whether, when the county treasurer shall have mailed the tax bills to the taxpayer, kept his office open during the time required by statute for the receipt of payment of taxes and, I assume, has also published the returns of taxation in the manner required by section 2648, he must exert any other efforts toward the collection of those items of tax which he reports as uncollected in his settlement with the county auditor. An examination of the statutes does not disclose any statutory requirement on the part of the county treasurer to mail tax bills to the taxpayer. Such act of the county treasurer appears to be purely a matter of accommodation or use of discretion on his part. The duty of the taxpayer is to pay the tax at the county treasury during the times specified by the statute or subject himself to the penalty provided by the statute. (See sections 2649 and 2653, General Code.) I am therefore of the opinion that your first inquiry should be answered in the negative.

From the foregoing discussion, it would appear that your second inquiry must be answered in the affirmative, for when the county treasurer has performed each act required of him by law and in addition thereto determines that the taxpayer is unable to pay the item of tax at the time prescribed by the statute and states such fact as his excuse for his failure to collect, it necessarily must be a sufficient compliance with the law.

I do not believe it is necessary to answer your third and fourth inquiries since, if the facts as set forth on the duplicate at the time of their entry thereon were a compliance with the law, no act could render them ineffective except a new enactment by the legislature.

Specifically answering your inquiries, it is my opinion that:

1. A county treasurer has no authority to collect real estate and public utility property taxes in any other manner or by any other means than that provided in the statutes.

2. When the county treasurer has mailed the tax bills for real estate and public utility property taxes to the taxpayer, has kept his office open for the receipt of payment of such taxes during the times required by sections 2649 and 2657, General Code, and has ascertained that the taxpayer is unable to pay the taxes at such times and reports such fact to the county auditor at the time of the semi-annual or annual settlement between the county treasurer and the county auditor, and the county auditor causes such reason to be noted in the marginal column appearing on the tax duplicate, such acts are a compliance with the requirements of the second sentence of section 2596, General Code, by the county auditor and county treasurer.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1381.

APPROVAL, LEASE TO CANAL LAND, IN WALNUT TOWNSHIP, FAIRFIELD COUNTY, OHIO, FOR THE RIGHT AND PRIVILEGE OF OCCUPYING AND USING CERTAIN SECTIONS FOR THE PURPOSE OF MAINTAINING THEREON POLES AND POLE LINES FOR THE TRANSMISSION OF ELECTRIC CURRENT FOR COMMERCIAL LIGHT AND POWER PURPOSES.

COLUMBUS, OHIO, August 11, 1933.

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

DEAR SIR:—You have submitted for my examination and approval two certain Canal Land Leases in triplicate, executed by you, in your official capacity, to the Ohio Power Company, by which for the stated term of 15 years each, there are demised and granted to said lessee the right and privilege of occupying and using certain sections of the Ohio Canal, in Fairfield County, for the purposes of maintaining thereon, poles and pole lines for the transmission of electric current, for commercial light and power purposes. By the first lease here in question, which provides for an annual rental of \$28 to be paid by said lessee, there is granted to the lessee named the right to occupy and use for said purpose 3995 feet of said Canal Land in Walnut Township in said County; while in the second of said leases, above referred to, which provides for an annual rental of \$24 to be paid