

which all members shall be actually or constructively present in order that there may be a full consultation and discussion, after which each member is to exercise his judgment before acting. See also, *State ex rel, Cline vs. Trustees*, 20 O. S., 288, *McCortle vs. Bates*, 29 O. S., 419."

Specifically answering your questions, it is my opinion:

1. That these trusts should be handled as now set up, and also, the book wherein the minutes of the board of education are recorded should show that the "income account," the securities, and any other property belonging to any one of the trusts are held in the name of the Board of Education of the Toledo City School District, Trustee.

2. It is not necessary to keep the transactions of the board of education in regard to administering such trusts separate and apart from the record of proceedings of the meetings provided for in Section 4754, General Code. Any transaction in regard to administering the trusts should be transacted at a regular or special meeting of the board of education. Approval of such transactions should be by the members of the board of education acting as members.

3. A member of the board of education can not withdraw from acting or taking part in any transaction concerning administering such trusts. If a member refuses to vote on such a transaction, it does not relieve him of any liability for which the members of the board of education may become personally liable.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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202.

TREASURER OF COUNTY, DELINQUENT TAX COLLECTOR,  
EXPENSES WHEN—PERSONAL AUTO, USE—MILEAGE.

**SYLLABUS:**

*The appropriation for the expense of the operation of the office of the county treasurer may not be legally used to pay the county treas-*

*urer mileage in the operation of an automobile used by him in the collection of delinquent taxes.*

COLUMBUS, OHIO, March 3, 1937.

HON. KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date which reads as follows:

“Our county treasurer has quite a large number of delinquent tax cases which he is willing to endeavor to collect himself. In other words he does not wish to employ a collector under Section 5696 of the General Code but is willing to use his own car and go out and call on these people who are delinquent and make an effort to collect their taxes.

Since this county does not have a county automobile which he could use I would like to know whether in your opinion he could legally pay for his mileage out of the appropriation made for the expenses of operating his office.

If such cannot be done can you suggest any way that this expense can be taken care of?”

Your question concerns the legality of the county treasurer paying himself mileage for the use of a car while performing services in the collection of delinquent taxes, and if such payment would be illegal how such expense could be taken care of.

For the purposes of this opinion it is not questioned that the county treasurer is qualified by law to collect delinquent taxes by receiving said taxes in his office or offices set up by virtue of law. It is further not questioned that the county treasurer may go outside of his office for the purpose of calling on delinquent taxpayers and thus obtaining overdue tax payments which would not otherwise be voluntarily paid to the treasurer in his office.

A review of the sections of the General Code of Ohio shows that the treasurer is clothed with ample authority and remedies to collect taxes from all taxpayers. Various penalties are provided, the remedy of distress exists as well as the right to institute suit in his own name against such taxpayer to recover delinquent taxes.

By virtue of Section 5696, General Code, an additional remedy is afforded, which section reads as follows:

“If the county commissioners deem it necessary, they may authorize the treasurer to employ collectors to collect such

taxes or part thereof, fixing the salary of such collectors which shall be paid out of the county treasury. All such salaries shall be apportioned ratably by the county auditor among all the funds entitled to share in the distribution of such taxes."

In *Hamilton County vs. Arnold*, 65 O. S. 479, it was held that the county commissioners after reading the tax list, may authorize the county treasurer to employ collectors; that this is the manner provided by law for bringing the question of appointing collectors before them for consideration, and the statutes enacted for the protection of public revenues are usually not merely directory but mandatory. Quoting from this same case it is said:

"The list in this section spoken of is the delinquent list, and the section is mandatory insofar as causing that list to be publicly read. The reading is for the information of the county commissioners, to enable them to determine \* \* \* whether they deem it necessary to authorize the treasurer to employ collectors to collect the list or any part thereof. Without hearing the list read, they would have no information upon which to determine whether they deem it necessary to authorize the treasurer to employ such collectors, neither could they determine whether the whole list should be collected by collectors or only a part thereof and the remainder by the treasurer."

It is well to note that the compensation of such collector or collectors must be definitely fixed before the delinquent tax collector or collectors enters upon his employment. This is well settled in the case above referred to.

Section 2749, General Code, provides for a statement of expenses semi-annually by the county treasurer incurred in the receiving of taxes, as therein provided, transportation to and from the place of collection, office rent, publishing and printing and posting of notices. It is further provided that the total expense so paid in any one year and allowed by the county commissioners shall not exceed one hundred dollars. This provision for the transportation to and from the place of collection of taxes refers to the setting up of tax collecting offices where necessary in the county in a town in which a county depository is located.

The office of a county treasurer is purely statutory as was held in the case of *State vs. Defiance County*, 7 O. N. P. 239, and he has no power to go beyond the terms of the statute and all persons dealing with him must take notice of the extent of his powers. The provisions of the statutes regarding the office of county treasurer direct unquestionably

what the treasurer must do in the conduct of his office in collecting taxes, accounting for the moneys obtained therefrom and protecting the moneys from loss until time for the distribution of the same according to law.

In *Hull vs. Alexander*, 69 O. S. 75, it was held that the county treasurer is strictly a collector of taxes and not a tax inquisitor or a taxing officer; that he performed his duty when he collected the money charged upon the tax duplicate and delinquent list delivered to him by the auditor, and that he was not authorized by statute to hunt up and collect old stale claims not placed on the duplicate or delinquent list of the current year by the auditor; that the auditor is the taxing officer and the treasurer is the collecting officer.

Sections 2749 and 5696, General Code, are the only statutory provisions for expenses of the office of the county treasurer and in the absence of further statutory provision, the conclusion is inescapable that by a strict construction of the statutes, no part of general appropriation made for the expense of operating the office of the county treasurer could be used to defray the expense of an automobile used in the collecting of delinquent taxes by the treasurer himself.

By virtue of Section 2991, General Code, the county treasurer receives a salary computed upon the population of the county of which he is the treasurer. Section 2989, General Code, provides for the payment of such salary and such additional compensation as may be provided by law.

In the case of *Teale vs. Stillinger*, 95 O. S. 63, it was held that a county treasurer is prohibited by statute from receiving any compensation for the performance of his official duty in excess of that provided by law.

In the case of *State vs. Stone*, 92 O. S. 63, it was held that it is the fixed policy of the State to pay a county official a salary no matter what additional duties may be imposed upon him unless the legislative intent to add an additional compensation appears clearly.

In Opinions of the Attorney General for 1916, Vol. II, page 1318, it was stated that if a county official receives an allowance or compensation either as fees for clerk hire or otherwise than especially provided by law, he shall be liable on his bond therefor.

It therefore is my opinion that a county treasurer, due to the apparent lack of statutory authority for the expense of an automobile used in the collection of delinquent taxes, cannot pay himself mileage out of the general appropriation made for the expense of operating such office

of county treasurer. If such payment is made the same would be illegal. Such expense must be borne by the treasurer himself.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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203.

APPROVAL—BONDS OF MOULTON TOWNSHIP RURAL  
SCHOOL DISTRICT, AUGLAIZE COUNTY, OHIO, \$30,000.00  
(Unlimited).

COLUMBUS, OHIO, March 4, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*  
GENTLEMEN :

Re: Bonds of Moulton Twp. Rural School Dist., Auglaize  
County, Ohio \$30,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school building bonds dated March 1, 1937, bearing interest at the rate of 3¼% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*