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## SYLLABUS:

1. The county treasurer may employ collectors, if so authorized in accordance with Section 5719.05, Revised Code, and attorneys, if so authorized in accordance with Section 305.14, Revised Code, to enforce collection of delinquent personal property tax accounts from taxpayers who now are located and reside outside the State of Ohio.

2. The compensation for any such collectors or attorneys must be fixed by the county commissioners and paid out of the county treasury in accordance with Sections 5719.31 and 305.17, Revised Code, respectively.

3. An action to collect delinquent Ohio taxes from taxpayers in other states may be maintained in any state if such delinquency has been properly reduced to judgment in Ohio. If no such judgment has been properly rendered, an action to collect delinquent Ohio taxes may be maintained in any state that has enacted laws extending comity to the tax laws of other states. In those states wherein such comity is not legislatively expressed, the right of the State of Ohio to maintain an action to collect or enforce delinquent taxes would most probably be denied.

Columbus, Ohio, June 12, 1963

Hon. John T. Corrigan  
Prosecuting Attorney  
Cuyahoga County  
1560 East 21st Street  
Cleveland, Ohio

Dear Sir:

The following is quoted from your request for my opinion:

“1. May the county treasurer employ collectors outside the State of Ohio to collect delinquent personal property tax accounts from taxpayers who now are located and reside outside of the State of Ohio?

“2. If the answer to Question No. 1 is in the affirmative, how may such collectors be compensated for their services?

“3. In the event collectors so employed by the county treasurer are unable to collect the delinquent personal property tax accounts may the county treasurer bring legal action against such delinquent taxpayers outside the State of Ohio?

“4. If the answer to Question No. 3 is in the affirma-

tive, may attorneys outside of the State of Ohio be employed as special counsel under the provisions of Section 305.14 of the Revised Code of Ohio, or any other applicable provision of the law, for the purpose of filing suits for the collection of such delinquent personal property taxes?

“5. If the answer to Question No. 4 is in the affirmative, how may such attorneys be compensated for their legal services?”

The county treasurer is charged with the responsibility of collecting personal property taxes under Section 5719.05, Revised Code, which provides as follows:

“The county treasurer shall forthwith collect the taxes and penalty on the duplicate by any of the means provided by law, and the funds collected shall be distributed in proper proportions to the appropriate funds.”

One of the means provided by law and available to the county treasurer for the collection of the taxes mentioned in Section 5719.05, Revised Code, is through the employment of collectors upon authorization to do so by the board of county commissioners. Section 5719.31, Revised Code. This statute clearly requires that the board of county commissioners must fix the salary of such collectors and that they shall be paid out of the county treasury. No other method of compensating such collectors is provided by law.

Section 5719.08, Revised Code, requires the county treasurer to enforce the collection of delinquent taxes by a civil action in the name of the treasurer for the recovery of such unpaid taxes. Section 309.09, Revised Code, provides that the prosecuting attorney shall be the legal adviser to all county officers and requires the prosecuting attorney to prosecute and defend all suits in which such officer is a party. This same section further provides that no county officer may employ any other counsel at the expense of the county except as provided in Section 305.14, Revised Code. This latter section provides as follows:

“If it deems it for the best interests of the county, the court of common pleas, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board to employ legal counsel to assist the prosecuting attorney, the board, or any other

county board or officer, in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such county board or officer is a party or has an interest, in its official capacity.”

There are no other provisions of the law which would enable the county treasurer to engage counsel for the purpose of enforcing the collection of delinquent taxes. Section 305.17, Revised Code, provides that the board of county commissioners shall fix the compensation of legal counsel employed pursuant to Section 305.14, Revised Code, and that compensation for such services shall be paid from the county treasury upon the allowance of the board.

The county treasurer may therefore employ collectors and attorneys for the purpose of enforcing the collection of delinquent taxes when so authorized pursuant to Sections 5719.05 and 305.14, Revised Code, respectively. It is noted that the duty of the county treasurer to collect taxes under Section 5719.05, Revised Code, is mandatory and that the requirement that he do so by any of the means provided by law does not therein provide any geographic limitation.

In order to fulfill his statutory duty it will in some instances require the employment of collectors and attorneys outside the State of Ohio.

The county treasurer may therefore employ collectors and attorneys outside the State of Ohio to collect and litigate delinquent personal property tax accounts from taxpayers who now are located and reside outside of the State of Ohio, if so authorized in accordance with Sections 5719.05 and 305.14, Revised Code, respectively.

In collecting taxes, the county treasurer is the ministerial agent of the state. (See 14 Ohio Jurisprudence 2d, Counties, Section 19 and Section 152). Although actions for the collection of personal taxes are required to be brought in the name of the county treasurer, they are prosecuted in the interest and for the benefit of the state. *Westency v. Schott, Treas.*, 58 Ohio St., 411.

I believe therefore that a complete answer to your questions compel a further consideration of the right of one state to main-

tain an action in another state to collect or enforce a tax delinquency.

The basic principles underlying this question are discussed in 51 American Jurisprudence, Taxation. Section 993 thereof expresses the concept as follows:

“Taxes are imposts collected for the support of the government, and not debts in the ordinary sense of that term, and the principles which prevent one state or country from enforcing the penal laws of another state or country have generally been construed to apply to foreign revenue laws, and to preclude a state or its collecting officer from maintaining in the courts of another jurisdiction an action for the collection of taxes due to it. The rule has been stated to be that even if a tax upon a nonresident is held to be a personal liability, he cannot be sued upon it except in the courts of the state in which it was assessed. It has accordingly been held that an action to recover a tax imposed in one state will not be entertained by a Federal court sitting in another state. Likewise, upon the theory that the revenue laws of one state have no force in another, it has been held that no action can be maintained by one state or political or municipal subdivision thereof in the courts of another state for the recovery of taxes alleged to be due the former. A distinction, however, must be drawn between an action in the courts of another state or jurisdiction to enforce a tax liability and an action in such other courts upon a judgment recovered in the courts of the taxing state for taxes. A judgment of another state is not to be denied full faith and credit in state and Federal courts merely because it is a judgment for taxes. Moreover, it is to be noted that the Supreme Court now regards the question whether one state must enforce revenue laws of another state to be an open question. It is indicated that a suit to recover taxes due under the statutes of another state may be allowed as a matter of comity without regard to the compulsion of the full faith and credit clause.”

If the action is being brought to enforce a judgment properly entered in Ohio, there is no doubt that such action can be maintained in a foreign state under the full faith and credit clause of Article IV, Section 1 of the United States Constitution. The fact that the judgment is based on a tax liability does not remove it from the protection of the full faith and credit clause. *State of Ohio, Department of Taxation v. Kleitch Bros., Inc.*, 357 Mich., 504,

98 N.W. (2d), 636; *Milwaukee County v. M. E. White Co.*, 296 U. S. 268, 80 L. ed., 220.

If, however, no judgment has been obtained, a foreign state need not give full faith and credit to the tax laws of Ohio. In this connection it is noted that the Ohio General Assembly enacted Section 5719.081, Revised Code, effective October 1, 1959. This section provides:

“The courts of this state shall recognize and enforce statutes concerning taxation constitutionally imposed by other states that extend like comity.”

The United States Supreme Court in the case of *Milwaukee County v. White Co.*, *supra*, at page 272, states the following:

“\* \* \* A state court, in conformity to state policy may, by comity, give a remedy which the full faith and credit clause does not compel. \* \* \* A suit to recover taxes due under the statutes of another state has been allowed without regard to the compulsion of the full faith and credit clause. *Holshouser v. Copper Co.*, 138 N.C., 248; 50 S.E., 650. The privilege may be extended by statute. See N.Y. Laws, 1932, c. 333. \* \* \*”

It appears, therefore, that an action to collect delinquent Ohio taxes from taxpayers residing in other states may be pursued in any state that has enacted laws extending comity to the tax laws of other states. In those states wherein such comity is not legislatively expressed, the right of the state of Ohio to maintain an action to collect or enforce delinquent taxes would most probably be denied.

It is therefore my opinion and you are advised:

1. The county treasurer may employ collectors, if so authorized in accordance with Section 5719.05, Revised Code, and attorneys, if so authorized in accordance with Section 305.14, Revised Code, to enforce collection of delinquent personal property tax accounts from taxpayers who now are located and reside outside the State of Ohio.

2. The compensation for any such collectors or attorneys must be fixed by the county commissioners and paid out of the county treasury in accordance with Sections 5719.31 and 305.17, Revised Code, respectively.

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Respectfully,  
WILLIAM B. SAXBE  
Attorney General