

**OPINION 65-23****Syllabus:**

The auditor's general tax list and the treasurer's general duplicate of real and public utility property compiled and made up pursuant to Section 319.28, Revised Code, must be in tabular form and alphabetical order as required therein and the permissive language in the final paragraph of that section refers only to the separate town lots and separate parcels of land in each township held in the name of a single owner of real property.

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**To: H. William Bowers, Warren County Pros. Atty., Lebanon, Ohio**  
**By: William B. Saxbe, Attorney General, February 10, 1965**

In your request for my opinion you have referred to Section 319.28, Revised Code, and have inquired whether the tax list and duplicate prepared by the county auditor pursuant to this section must be in alphabetical form or whether it may be arranged so that the lots and parcels of real property are in numerical order. The additional information which you have forwarded to me shows that the county auditor and county treasurer have placed different interpretations upon the meaning of this section.

Section 319.28, Revised Code, reads:

"On or before the first Monday of August, annually, the county auditor shall compile and make up, in tabular form and alphabetical order, separate lists of the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names real property has been listed in each township, municipal corporation, special district, or separate school district, or part of either in his county, placing separately, in appropriate columns opposite each name, the description of each tract, lot, or parcel of real estate, the value of each tract, lot, or parcel, the value of the improvements thereon, and of the names of the several public utilities whose property, subject to taxation on the general tax list and duplicate, has been apportioned by the department of taxation to the county, and the amount so apportioned to each township, municipal corporation, special district, or separate school district or part of either in

his county, as shown by the certificates of apportionment of public utility property. If the name of the owner of any tract, lot, or parcel of real estate is unknown to the auditor, 'unknown' shall be entered in the column of names opposite said tract, lot, or parcel. Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the auditor shall correct such lists in accordance with the additions and deductions ordered by the department of taxation, and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year. In making up such tax lists the auditor may place each town lot in its numerical order, and each separate parcel of land in each township according to the numerical order of the section."

The first sentence of this section directs that the separate lists shall be "in tabular form and alphabetical order." The language used here is mandatory in form, and if it were not for the final sentence of this section, there could be no suggestion that the general tax list and general duplicate could be compiled in any order other than alphabetical by the names of the owners. The question, then, is whether the permissive language used in the closing sentence of this section grants to each county auditor the discretion to prepare his tax list in an order different from the uniform plan set out in the first sentence.

Section 2583, General Code, the predecessor to Section 319.28, Revised Code, was enacted in substantially its present form in 1915, effective January 1, 1916 (106 Ohio Laws, 246, 261). I do not find that the meaning of this section has been interpreted by any court during the ensuing years.

In my opinion the language used in Section 319.28, Revised Code, and its predecessor, prescribes the manner in which the county auditor shall prepare his general tax list and duplicate, viz. in alphabetical order by the names of the owners.

To me, the permission granted in the last sentence of the section does not grant discretion to disregard the language appearing earlier in the statute; on the contrary, this grants permission only to proceed as directed and within the framework of the statute. Within the list prepared in alphabetical order and opposite the name of any one owner, the separate town lots and parcels of land in each township which are owned by such person or firm may be listed in numerical order as directed.

The provisions of Section 319.41, Revised Code, strengthen me in the belief that the legislature intended to establish one form for the tax list and duplicate, and did not intend that these should vary from county to county. That section reads:

"The county auditor shall set down the amount of taxes charged against each entry on the tax lists or duplicates, in two separate columns, one half thereof, exclusive of road taxes, in each column, and add all road taxes to the first half with a sufficient blank space at the right of each column to write 'paid,' and when payment of either half of such taxes is made the county treasurer shall write in the blank space opposite such tax 'paid.'

"The auditor of state may prescribe such other forms for tax lists and duplicates as seem proper to him in order to produce uniformity throughout the state, and auditors shall conform thereto."

Sections 319.29 and 319.34, Revised Code, which refer to the general personal property tax list and duplicate and the classified tax list and duplicate, respectively, also direct that the lists shall be compiled and made up in tabular form and alphabetical order.

It is, therefore, my opinion and you are advised that the auditor's general tax list and the treasurer's general duplicate of real and public utility property compiled and made up pursuant to Section 319.28, Revised Code, must be in tabular

form and alphabetical order as required therein and the permissive language in the final paragraph of that section refers only to the separate town lots and separate parcels of land in each township held in the name of a single owner of real property.