

4191.

APPROVAL, PAPERS IN CONNECTION WITH THE CONVERSION OF THE FRANKLIN LOAN AND SAVINGS COMPANY OF COLUMBUS, OHIO, INTO FRANKLIN FEDERAL SAVINGS AND LOAN ASSOCIATION OF COLUMBUS.

COLUMBUS, OHIO, April 26, 1935.

HON. W. PAUL WAGNER, *Superintendent of Building and Loan Associations of Ohio, Columbus, Ohio.*

DEAR SIR:—I have examined the various papers submitted by you in connection with the conversion of The Franklin Loan and Savings Company of Columbus, Ohio, into Franklin Federal Savings and Loan Association of Columbus, and find the papers submitted and the proceedings of said The Franklin Loan and Savings Company, as disclosed thereby, to be regular and in conformity with the provisions of section 9660-2 of the General Code of Ohio.

All papers, including two copies of the charter issued to the said Franklin Federal Savings and Loan Association, are returned herewith to be filed by you as a part of the permanent records of your department, except one copy of the charter which the law provides shall be filed by you with the Secretary of State. The law further provides that such filing with the Secretary of State shall be within ten days after the requirements of said section 9660-2 have been complied with by The Franklin Loan and Savings Company, and that your approval shall be endorsed on the copy so filed. You will find on the copies of the charter, form of approval for your signature.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4192.

APPROVAL, BONDS OF CHESTER TOWNSHIP RURAL SCHOOL DISTRICT, CLINTON COUNTY, OHIO, \$525.00.

COLUMBUS, OHIO, April 27, 1935.

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

4193.

DELINQUENT TAX—REFUNDING OF INTEREST PAID FOR DELINQUENT TAXES NOT AUTHORIZED UNDER AMENDED S. B. NO. 105.

SYLLABUS:

1. *The provisions of Amended Senate Bill No. 105 of the second special session of*

the 90th General Assembly do not authorize the refunding of interest which has been paid on account of delinquent taxes and assessments for the first and second half of the years 1932 and 1933.

2. There is no authorization under the provisions of the above act to refund penalties which have been paid on account of delinquent taxes and assessments for the years prior to 1932.

COLUMBUS, OHIO, April 27, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 1 of Amended Senate Bill No. 42, as amended in Senate Bill No. 105 by the last special session of the 90th General Assembly, provides that any person, firm or corporation charged with or legally authorized to pay real property taxes and assessments which have become delinquent at or prior to the August settlement in the year 1934, may at any time prior to September 1st, 1935, elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. It further provides that in case a penalty and interest has been paid on account of delinquent taxes and/or assessments for the first or second half of the years 1932 and/or 1933, such penalty shall be refunded on order of the county auditor, directed to the county treasurer, providing the principal sum of such taxes and assessments is paid prior to the first day of September, 1935.

QUESTION 1. Does the provision for refunding, contained in this section, authorize the refunding of interest which has been paid as well as penalties paid for the first or second half of the years 1932 and/or 1933?

QUESTION 2. In the event that penalties have been paid on account of delinquent taxes and assessments for years prior to 1932, may such penalties be refunded?”

Section 1 of Amended Senate Bill No. 105 of the second special session of the 90th General Assembly, reads as follows:

“Any person, firm or corporation charged with or legally authorized or required by law or decree of court to pay real property taxes and assessments which have become delinquent at or prior to the August settlement in the year * * * 1934, or any person, firm or corporation holding a lien upon such real property may at any time prior to the first day of September in the year * * * 1935 elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. Provided, however, that no such person shall be entitled to make such election unless all taxes, assessments and penalties for the year * * * 1934 then due and payable have been paid. Provided that in case a penalty and interest has been paid on account of delin-

quent taxes and/or assessments, for the first or second half of the years 1932 and/or 1933, such penalty shall be refunded on order of the county auditor directed to the county treasurer provided the principal sum of such taxes and assessments is paid prior to the first day of September, 1935."

In the interpretation or construction of statutes, the primary and paramount rule is to ascertain and give effect to the intention of the legislature, as gathered from the provisions enacted, by the application of all settled rules of construction. A correct construction is given only when the intention of the General Assembly is ascertained. Such intention, however, must be determined from the language of the statute itself.

The right of courts to interpret a statute is based upon some uncertainty of meaning, some apparent ambiguity of terms or some apparent conflict of provisions. When the language of a statute is plain and unambiguous, there is no occasion for resorting to the rules of statutory interpretation. It is stated in Ohio Jurisprudence, Volume 37, pages 517, 518, as follows:

"There is no occasion for resorting to rules of statutory interpretation if the language of the statute is plain and unambiguous and conveys a clear and definite meaning. Therefore, where the statute on its face is free from ambiguity, it is the established policy of the courts to avoid giving it any other construction than that which its words demand. Indeed, it is not permissible to make an interpretation contrary to the plain and express words of the instrument, the meaning of which the general assembly must be credited with understanding. To the contrary, the plain provisions of the statute must control."

The above text is supported by the following cases:

Hough vs. Dayton Mfg. Co.,

66 O. S. 427;

Pittsburgh, C. C. and St. L. R. Co. vs. Naylor,

73 O. S. 115;

Krueger vs. Krueger, 111 O. S. 369;

Manual vs. Manuel, 13 O. S. 458.

In the construction of statutes, it is the express legislative intent that is of importance. The law does not concern itself with the legislature's unexpressed intention. In the case of *Slingluff vs. Weaver*, 66 O. S. 621, it is stated:

" * * * the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

A penalty as applied to the non-payment of taxes when due, is a punishment imposed for failure to make payment on time, while interest on taxes not paid when due is compensation for the use of the money. In the case of *Miller vs. Lakewood Housing Company*, 125 O. S. 152, a complaint was filed with the Tax Commission of Ohio, asking for a remission of interest on delinquent real estate taxes under and by virtue

of section 5624-10 of the General Code. It was the theory of the complainant that the Tax Commission of Ohio had jurisdiction to remit the interest, upon the ground that such interest constituted a penalty within the meaning of section 5624-10, General Code. Said section reads in part as follows:

"The tax commission of Ohio may remit taxes and penalties thereon, found by it to have been illegally assessed, and such penalties as have accrued or may accrue, in consequence of the negligence or error of an officer required to perform a duty relating to the assessment of property for taxation, or the levy or collection of taxes."

The court, however, held that under section 5624-10, General Code, the Tax Commission had no jurisdiction to remit the interest in question, for remission of interest is not authorized by statute. The first branch of the syllabus of said case reads of follows:

"Under Section 5624-10, General Code, the Tax Commission of Ohio is not authorized to remit interest charged on the duplicate against delinquent lands, city or town lots or parts of lots certified by the county auditor in accordance with Section 5712, General Code."

Likewise, in Amended Senate Bill No. 105, supra, the authority granted is merely to refund penalties which have been paid on account of delinquent taxes and assessments and, therefore, in view of the foregoing it would appear that the act merely authorizes a refunding of penalties which have been paid, and not interest.

I come now to your second question.

It will be noted that the only provisions for the refunding of penalties are contained in the last sentence of section 1 of the act, which reads as follows:

"Provided that in case a penalty and interest has been paid on account of delinquent taxes and/or assessments, for the first or second half of the years 1932 and/or 1933, such penalty shall be refunded on order of the county auditor directed to the county treasurer provided the principal sum of such taxes and assessments is paid prior to the first day of September, 1935."

The language contained therein is plain and apparent and conveys a clear and definite meaning. There is no provision therein for the refunding of penalties other than those paid on account of delinquent taxes and assessments for the first and second half of the years 1932 and 1933.

Therefore, in specific answer to your question, it is my opinion that:

1. The provisions of Amended Senate Bill No. 105 of the second special session of the 90th General Assembly do not authorize the refunding of interest which has been paid on account of delinquent taxes and assessments for the first and second half of the years 1932 and 1933.

2. There is no authorization under the provisions of the above act to refund penalties which have been paid on account of delinquent taxes and assessments for the years prior to 1932.

Respectfully,

JOHN W. BRICKER,
Attorney General.