

1001.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENT IN VIL-
LAGE OF MARYSVILLE, UNION COUNTY.

COLUMBUS, OHIO, October 7, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1002.

INTEREST—UPON DELINQUENT TAXES—WHEN LEGALLY
ASSESSABLE.

SYLLABUS:

The interest charge on delinquent taxes on lots or lands provided for by Sections 5712 and 5713, General Code, may not be legally assessed or extended unless such delinquent lots or lands are included in the list of delinquent lands in the county and published by the county auditor in the manner provided by Section 5704, General Code, and until such delinquent lots or lands have been certified to the Auditor of State as provided by Section 5712, General Code, pursuant to the notice contained in said published list of delinquent land provided for by Section 5704, General Code.

COLUMBUS, OHIO, October 8, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Some time ago you received an application for the remission of certain penalties and interest extended by the Auditor of Cuyahoga County with respect to delinquent taxes extending over a period of eight years on certain real property located on Prospect Avenue near East 30th street, in the city of Cleveland, and listed for taxation in the name of Anna M. Brainard and Laura C. Brainard. It appears from the application that on or about the year 1920 said property was leased to the J. L. Free Company, under an agreement that the lessee was to pay the taxes on said property; that said J. L. Free Company made an assignment in 1927; that after said assignment the petitioners discovered that the J. L. Free Company had not paid the taxes and assessments levied against the property. The application for the remission of the penalties and interest extended by the county auditor on said delinquent taxes is based on the ground that the county auditor did not publish said property as delinquent, as was provided for by Section 5704, General Code.

The jurisdiction of the Tax Commission to receive and act upon an application of this kind is conferred by Section 5624-10, General Code. You will observe from the provisions of this section that the power therein conferred is to "remit taxes and penalties thereunder found by it to be illegally assessed, and such penalties as may 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 section makes no reference to interest, but I believe it may be assumed that the section is broad enough to cover this subject, since interest is, after all, a form of penalty.

Section 5678, General Code, makes provision for the imposition of penalties. This

section provides that if one-half of the taxes charged against an entry of real estate is not paid on or before the 20th day of December in that year, or collected by distress or otherwise prior to the February settlement, a penalty of ten per cent thereon shall be added to such half of said taxes on the duplicate. It is further provided in this section that if such taxes and penalty, including the remaining half thereof, are not paid on or before the 20th day of June next thereafter, or collected by distress or otherwise prior to the next August settlement, a like penalty shall be charged on the last half of such taxes; and that the total of such amounts shall constitute the delinquent taxes on such real estate to be collected in the manner prescribed by law. In this state taxes and assessments are levied upon the corpus of real property, and not upon the titles or several interests by which the same may be held, unless otherwise expressly provided by statute. *Village of St. Bernard vs. Kemper*, 60 O. S. 244. In this view the taxing authorities of the county were not required to take cognizance of any agreement upon the part of the J. L. Free Company, as lessee of this property, to pay the taxes upon the same; and under the provisions of Section 5678, General Code, the non-payment of the taxes on this property when the same became due gave rise to the penalties provided for by said section, and thereby imposed upon the county auditor the duty of extending such penalties on the delinquent taxes on this property. Inasmuch as under the provisions of Section 5624-10, General Code, above noted, you are only authorized to remit taxes and penalties illegally assessed, it follows that you have no authority under this application to remit penalties assessed on the delinquent property here in question.

The question as to whether the interest extended by the county auditor on the delinquent taxes on this property was illegally assessed, and, therefore, subject to remission by you under the provisions of Section 5624-10, General Code, is one of some difficulty. Prior to the enactment of the statutory provisions now in force, providing for the certification of delinquent taxes on lands and the ultimate collection thereof by foreclosure proceedings passed by the Eighty-second General Assembly on March 21, 1917, 107 O. L. 735, the delinquent taxes under the then existing statutory provisions were collected by the sale of such delinquent tax lands on tax title certificate in the manner set forth by the then provisions of Sections 5704, et seq., General Code. Under the then existing provisions of Section 5704, General Code, the county auditor was required to publish the list of delinquent lands in his county, weekly for two weeks between the 20th day of December and the 2nd day of February next ensuing, to which list, as published, there was required to be attached a notice that the delinquent lands would be sold by the county treasurer, as required by law.

Section 5711, General Code, as it then read, provided that the county treasurer, or his deputy, should, on the second Tuesday in February, offer for sale separately each tract of land, city or town lots or parts of lots contained in such advertisement upon which the taxes and penalty had not been paid; and that the person or persons offering at the sale to pay the taxes and penalty charged on such land, lot or part of lot, for the least quantity thereof, should be the purchaser or purchasers of such quantity.

Section 5712, General Code, provided that the person or persons purchasing such tract of land or town lot, or any part thereof, should forthwith pay to the treasurer the amount of taxes and penalty charged thereon.

By Section 5715 it was provided that the county auditor should make and deliver to the purchaser of land or lots, sold for delinquent taxes, as aforesaid, a certificate of purchase, therein describing the land or lots so sold as described in the tax duplicate, and stating therein the amount of taxes and penalty for which they were sold.

Under the provisions of Section 5717, General Code, no deed could be made by the county auditor for any land or lots so sold for taxes until the expiration of two years from and after such sale. This was for the purpose of affording the owner

of the property the opportunity of redeeming the property thus sold on the certificate provided for by Section 5715, General Code. After the lapse of two years, the county auditor was required to execute a deed to the purchaser of such delinquent land or lot, as provided for by Section 5719, General Code.

By Sections 5734 and 5735, General Code, provision was made for the redemption of such delinquent lot or land by the owner thereof. This was done by the deposit with the county treasurer of an amount of money equal to that for which such land or town lot was sold at said tax sale, and the taxes subsequently paid thereon by the purchaser, or those claiming under him, together with interest, and a penalty which was 15% of the whole amount paid if the property was redeemed within one year from the time of the tax sale and 25% on the whole amount paid if such property was redeemed after the expiration of one year from the time of said tax sale and within the time limited by law for such redemption. It was further provided by Section 5724, General Code, that if a tax sale should be invalid on account of irregularity in the proceedings of an officer having a duty to perform in relation thereto, the purchaser at such sale should be entitled to receive the delinquent taxes and penalty paid by him, together with interest thereon. It thus appears that under the prior delinquent tax law above referred to, no interest was legally chargeable on delinquent taxes until after such property had been sold at delinquent tax sale, which delinquent tax sale, as above noted was made pursuant to a delinquent tax list and notice published by the county auditor, in the manner required by the then provisions of Section 5704, General Code.

The present delinquent tax law has been carried into the General Code under sections numbers corresponding to those carried by the prior delinquent tax law. Section 5704, General Code, as it now reads, requires the county auditor to publish a list of delinquent lands in the county once a week for two consecutive weeks between the 20th day of December and the 2nd Thursday in February next ensuing, to which list, as published, there is required to be attached a notice that the delinquent lands listed will be certified to the Auditor of State as delinquent, as provided by law.

Section 5712, General Code, provides that the county treasurer, or his deputy, and the county auditor, or his deputy, shall attend at the court house in the county on the second Tuesday in February, in conformity with the notice prescribed in Section 5704, General Code, and at and after the hour of ten in the forenoon, the county auditor or his deputy shall proceed to make, in triplicate, a certificate to be known as a delinquent land tax certificate for each tract of land, city or town lot or part of lot contained in such advertisement, on which the taxes, assessments and penalty have not been paid, describing each tract of land, city or town lot the same as it is described on the tax duplicate, and the valuation thereof as shown upon said tax duplicate, and the amount of taxes, assessments and penalty thereon due and unpaid; and state therein that the same has been certified to the Auditor of State as delinquent. It is further provided that the original of said certificate shall be forwarded to the Auditor of State and that the duplicate and triplicate thereof are to be kept, one in the county treasurer's office and one in the county auditor's office. This section further provides that "interest at the rate of eight per cent per annum shall be charged on the duplicate against the delinquent lands, city or town lots or parts of lots certified by the county auditor on such certificate."

It appears to be conceded that no delinquent list, containing the property here in question or other delinquent property in Cuyahoga County, was published by the county auditor as provided by Section 5704, General Code, and the question here presented is whether the interest charged, as provided for by Section 5712, General Code, was legally assessed in view of the fact that the publication provided for by Section 5704, General Code, was not made. Touching this question, it was noted that under the prior delinquent tax law no interest charge could be made on delinquent taxes until

after the sale of the lot or land upon which such taxes were assessed at the delinquent tax sale then provided for by law, and the right to sell such lot or land at delinquent tax sale was conditioned upon the fact that such delinquent land or lot had been listed and published, together with notice of the sale thereof, in the manner then provided by law.

With respect to the interest charges here in question, it appears that no such charge could legally be made until the certification of the delinquent lot or land to the State Auditor, in the manner provided in Section 5712, General Code. The right to make the certification provided for by this section, however, clearly depends upon the fact that the delinquent lot or land so certified has been listed and published, together with notice of such certification, in the manner provided by Section 5704, General Code, the provisions of which were in force at the time of the tax delinquency here in question.

Section 5713, General Code, provides that "the State shall have a first and best lien on the premises described in said certification, for the amount of taxes, assessments and penalty, together with interest thereon at the rate of eight per cent per annum, from the date of delinquency to the date of redemption "thereof." This provision, it will be observed, does not include all delinquent lands, but only such as are described in the certification made in the manner provided by Section 5712, General Code; and as above noted, this certification of delinquent lands is only made after the same has been included in the list of delinquent lands published in the manner provided by Section 5704, General Code, and pursuant to the notice set out in said published list of delinquent lands.

It is a familiar principle of law that delinquent taxes do not bear interest unless it is expressly so provided by statute. It is competent, of course, for the Legislature to prescribe the payment of interest as a penalty for delay in the payment of taxes; but this purpose can be effected only by statutory provision clearly manifesting the legislative intent with respect to the right of taxing authorities to recover such interest as a penalty for the non-payment of taxes, when and as the same become due. Under the present delinquent tax law, as well as under the former law, interest on delinquent taxes on real property is provided for but only after certain steps provided by the statute have been complied with by the taxing authorities. The statutory proceedings, upon which the right to charge interest on the delinquent taxes on the property here in question depended, were not taken, and I am of the opinion that under the provisions of Section 5624-10, General Code, above noted, you are authorized to remit the interest charges complained of in said application.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1003.

APPROVAL, BONDS OF CITY OF SPRINGFIELD, CLARK COUNTY—
\$42,000.00.

COLUMBUS, OHIO, October 8, 1929.

Industrial Commission of Ohio, Columbus, Ohio.