

"An elected county central committee may not legally select as its chairman a person not an elected member thereof."

Specifically answering your inquiry, it is my opinion that the removal of the chairman of a county central committee from the precinct from which he was elected creates a vacancy in the office of chairman of such county central committee, since such person thereby ceases to be a member of such committee.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3979.

CORPORATION—DEDUCTION FROM ARREARAGES ON FRANCHISE TAX
WHERE OVERCHARGE MADE.

SYLLABUS:

1. *If, after the examination of the books of the public utility or corporation provided for in section 5461 of the General Code, it is determined that, due to erroneous reports filed by such utility or corporation, there was an over-charge of franchise taxes for two years and an under-charge for three years, of the five year period provided for in said section, such over-charge may be deducted from the full arrearages for the three years and certification made to the State Auditor on such basis.*

2. *In such event, the application for refund for over-payment should not be presented to the Sundry Claims Board for settlement.*

COLUMBUS, OHIO, February 26, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of February 6 which reads as follows:

"The Tax Commission of Ohio is required to, by examination of franchise tax returns, determine whether or not the reporting corporation have completely returned all data to the Commission.

Examiners are sent out to examine the books of the corporations and go back five years in the examinations. We cite to you the following occurrence:

In examining over a period of *five* years, it was found that for *three* years the findings were against the corporation, ending in arrearages to be certified to the Auditor of State. In *two* of the years, it was found that the corporation had erroneously charged itself in its reports an over-payment of the franchise tax.

The question we would like to have an opinion on is whether or not when the final certification is made to the State Auditor for the arrearage charges for short payment, may the reconciliation be entered into by the Tax Commission by deducting the over-payments for the two years from the full finding of arrearages for the three years, or must the question of the refund of the over-payment be presented to the Sundry Claims Board for settlement?"

Section 5461 of the General Code of Ohio reads as follows:

"When any public utility or corporation fails to make any report to the tax commission required by law or makes such report and fails to report or reports erroneously any information essential to the determination of any amount, value, proportion or other fact to be determined by the tax commission pursuant to law which is necessary for the fixing of any fee, tax, or assessment, the tax commission shall proceed to determine such amount, value proportion, or other fact as nearly as practicable and shall certify the same as required by law. Such power and duty of the tax commission shall extend to and only to the five years next preceding the year in which such inquiry is made. Upon the determination and certification by the tax commission herein authorized a tax fee, or assessment shall be charged for collection from such public utility or corporation at the rate provided by law for the year or years when such tax, fee, or assessment was omitted, or erroneously charged so that the total tax, fee, or assessment paid and to be paid for such year or years shall be in the full amount chargeable to such public utility or corporation by law. Such charge shall be without prejudice to the collection of any penalty authorized by law."

All corporations, domestic and foreign, including public utilities, are required by law to make full disclosures to the Tax Commission of Ohio of all information essential to the determination of such facts upon which fees, taxes or assessments shall be calculated.

By terms of the above section, when a corporation either fails to report or erroneously reports the information required by law the Tax Commission may cause the books of such corporation to be examined, and such examination may extend to the five years next preceding the year in which it is made. It must be observed that the statute provides that:

"A tax, fee, or assessment, shall be charged for collection for the year or years when such tax, fee, or assessment, was omitted or erroneously charged so that the total tax, fee or assessment paid and to be paid for such year or years shall be in the full amount chargeable to such corporation by law."

In other words, after the full amount of the tax due, for the period of five years next preceding the date of the inquiry, is determined there shall be charged for collection the difference between the incorrect amount previously charged for said period of five years and the full amount due for such five year period.

The significant fact that the words "erroneously charged," which imply an overcharge as well as an undercharge, are used, impels the conclusion that it is the intent of the statute to permit an allowance for an overcharge.

It therefore seems apparent and it is my opinion that, if after the examination of the books of the public utility or corporation provided for in section 5461 of the General Code, it is determined that, due to erroneous reports filed by such utility or corporation, there was an overcharge of franchise taxes for two years and an undercharge for three years, of the five year period provided for in said section, such overcharge may be deducted from the full arrearages for the three years and certification made to the State Auditor on such basis. In such event, the application for refund for overpayment should not be presented to the Sundry Claims Board for settlement.

Respectfully,

JOHN W. BRICKER,

Attorney General.