

Code, which provides that any person violating any provision of law relating to or regulating the use of inter-county highways or main market roads shall be liable for all damages resulting to such highway.

I further call your attention to Section 2408 of the General Code, which provides in part as follows:

“The board of county commissioners may sue and be sued, plead and be impleaded, in any court of judicature, bring, maintain and defend all suits in law or in equity involving an injury to any public, state or county road * * * established by such board in its county.”

I am of the opinion that you would get better results from a civil action than from a criminal action. You could use the criminal statute as a basis for your civil action.

I am of the further opinion that the injury which you describe may be prevented by injunction. The public has a right of travel over these roads and the injury is not limited to the road itself but to the public who are inconvenienced not only in traveling over an injured road but in being compelled to detour while the road is being repaired. I think that there is an irreparable injury upon which to base an injunction. You will have to determine which civil statute is applicable to the particular road.

Respectfully,

EDWARD C. TURNER,
Attorney General.

343.

VALUE OF PROPERTY OF PUBLIC UTILITY—WHEN CERTIFIED TO COUNTY AUDITOR FOR TAX DUPLICATE APPORTIONMENT IS FINAL UNLESS A DIFFERENT REPORT FILED BY PUBLIC UTILITY AND CORRECTED AND CERTIFIED BY TAX COMMISSION IN CURRENT YEAR.

SYLLABUS:

When the value of the property of a public utility is apportioned and certified to a county auditor to be placed on the tax duplicate, such apportionment is final unless a different report is filed by the public utility and said apportionment corrected and certified by the Tax Commission in the current year.

COLUMBUS, OHIO, April 19, 1927.

HON. HOWARD J. SEYMOUR, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Acknowledgement is made of your recent communication with which you inclosed a letter from the county auditor of Portage County which reads:

“A question has arisen in the matter of taxes between the village of Mantua and the city of Ravenna upon which I would like to have your written opinion. The situation seems to be about as follows:

The Ohio Electric Power Company, formerly the Ravenna Gas & Electric Light Company, which has lines in several of the different taxing districts of Portage county, has for the last nine years certified to the Tax Commission of Ohio all of their taxable property as being in Ravenna city, consequently all the taxes which should have been distributed through these several taxing districts has at the time of our semi-annual distribution paid

into the treasury of Ravenna city. The error was not discovered until early in the year 1926 after that Tax Commission had certified to us the valuation of the Ohio Electric Power Company for the year 1926. As soon as the error was discovered the matter was taken up with the company and also with the tax commission which submitted to us a corrected certificate of valuation and distribution which took care of the situation for the current tax year.

Mantua village has and perhaps the other taxing districts affected may ask for a readjustment on account of the tax of former years having been paid in to the Ravenna treasury. The question now arises, have we any authority in future distribution of taxes to withhold from what might appear to be an equitable share of the money due the city of Ravenna and credit it to the districts into which the money should have originally gone. If so, how may we arrive at an equitable distribution. We can see that as a matter of equity these districts should be re-imbursed but can find no authority in law for so doing."

You ask for my opinion as to:

"What procedure, if any, can be taken to reimburse the village of Mantua and the townships which are in a similar position."

The county auditor's letter discloses that the Ohio Electric Power Company has lines in several taxing districts of Portage county, but in reporting and certifying its taxable property to the tax commission, it was stated that all of the company's taxable property was in the city of Ravenna, and therefore the Tax Commission certified the value of said property to the county auditor as being all in the city of Ravenna. The county auditor in making the final distribution consequently paid all taxes on said property into the treasury of the city of Ravenna. On the discovery of this error in the year 1926, after the Tax Commission had certified the valuation of said property, a corrected certificate of valuation and distribution was made for the current tax year.

Your letter also states that this question was submitted to the Tax Commission of Ohio, and that said commission replied as follows:

"Once a valuation is certified by this commission to a county auditor, there is nothing that this commission can do to correct such certification unless a correct return of the property is made by the public utility making the error, and the auditor can, if the error is discovered, make a correction to his duplicate in the current year's collection but cannot go back of a collection and settlement between the treasurer and himself on items of personal property."

The Ohio Electric Power Company (formerly The Ravenna Gas and Electric Light Company), for several years certified to the tax commission that all of their taxable property was in the city of Ravenna. The tax commission valued this property for taxation and certified said valuation to the county auditor of Portage county without making any apportionment to any other taxing district.

Section 5446, General Code, provides as follows:

"The commission shall apportion the value of the property of all other public utilities assessed according to the provisions of this act:

(a) When all of the property of such public utility is located within the limits of a county, the assessed value thereof shall be apportioned by the commission between the several taxing districts therein, in the proportion

which the property located within the taxing district in question, bears to the entire value of the property of such public utility, * * *.”

Section 5447, General Code, provides that:

“On the second Monday of July, the commission shall certify such apportionment to the auditor of each county in which any of the property of the public utility is located.”

Section 5448, General Code, provides as follows:

“The county auditor shall place the apportioned value on the tax list and duplicate and taxes shall be levied and collected, in the same manner and at the same rate as other personal property in the taxing district in question.”

It will be noted that the valuation of the property of said public utility is made by the Tax Commission and certified by said Commission to the county auditor. It is then the mandatory duty of the county auditor to place the apportioned value on the tax list and duplicate. It is also expressly provided that taxes shall be levied and collected upon said value so certified by the Tax Commission. The Tax Commission makes the apportionment of the value of the property of public utilities from the annual report submitted to it by said public utility. If said report for the current year is found to be incorrect, said public utility may file a corrected report and the Tax Commission may re-apportion the value of the property of said public utility; but as stated in the Commission's letter to you, said Commission has no authority to make said corrections and re-apportionments except during the current year.

It is noted that it is the duty of the county auditor to place upon his tax list and duplicate the apportioned value of the property of the public utility so certified to him by the Tax Commission, and said auditor is unauthorized to make any change in said valuations so submitted.

It is therefore evident that said county auditor is unauthorized to go back of a collection and settlement between the treasurer and himself on items of personal property. The failure to apportion the value of said public utility among the various taxing districts of Portage county is not a clerical error of the county auditor which he is authorized to correct. Neither is there any authority for said county auditor to make re-adjustments on account of the tax of former years having been paid to the city of Ravenna when it should have been apportioned to various taxing districts. Said county auditor is unauthorized to withhold in future distribution of taxes, the share of the money due the city of Ravenna and credit it to the districts into which the money would have gone originally had it been correctly apportioned.

Specifically answering your question, it is my opinion that there is no procedure authorized whereby the village of Mantua and the townships of Portage county, in a similar position, may be reimbursed by the city of Ravenna.

Respectfully,

EDWARD C. TURNER,
Attorney General.