

"the receipt, safe keeping and payment over of all money * * * which may come under its custody." By virtue of sections 2732 and 2288-1, General Code, securities may be pledged in lieu of the undertaking. In view of the provisions of section 2744, General Code, it is my opinion that checks received for collection only do not constitute money in the bank's custody until the collection is effected. Furthermore, there is no necessity for the pledging of collateral, since the risk is upon the taxpayer and not upon the county. As above noted, section 2744, supra, provides that the taxes are not paid until the money is received by the treasurer or the depository. When the money reaches the depository, it becomes part of the general balance of the county, and the security given by the bank covers it.

Specifically answering your questions, it is my opinion that:

1. A county may not legally pay to a depository bank a collection fee on checks drawn upon other banks and received by the county treasurer for taxes, where the depository bank accepts such checks for collection only.

2. There is no authority for the pledging of securities by a depository bank with the county to cover such checks during the process of collection.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3049.

COUNTY AUDITOR—NOT REQUIRED TO ADD ASSESSMENT FOUND DUE BY TAXPAYER AFTER OCTOBER SETTLEMENT TO DELINQUENT TAX LIEN RECORD OF PERSONAL PROPERTY TAXES ON FILE WITH RECORDER UNTIL SUCH ITEM RETURNED UNPAID BY TREASURER.

SYLLABUS:

1. *When the county auditor, after the settlement between the county treasurer and himself, determines, pursuant to the provisions of Section 5398, General Code, that certain assessment items are due from a taxpayer, he is not required to add such assessed items to the delinquent tax lien record of delinquent personal property taxes on file with the county recorder until the county treasurer in his settlement has returned such item of taxes as unpaid. (§5694, G. C.)*

2. *When, after the October settlement between the county auditor and the county treasurer, the Tax Commission, pursuant to the authority of Section 5395, General Code, certifies a deficiency assessment of taxes to the county auditor, the county auditor is not required by the provisions of Section 5694, General Code, to add such items to the delinquent tax lien notice record on file with the county recorder until the county treasurer in his settlement with the county auditor, has returned such tax item as unpaid.*

COLUMBUS, OHIO, August 16, 1934.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"We refer to General Code Section 5694, and indirectly to Section 5696-1, General Code.

Section 5696-1 in substance provides for the method of releasing a lien placed against the property of a person by reason of his failure to pay his personal property tax, and also provides that the County Recorder shall charge a fee of twenty-five cents for recording the release of such lien at such time that such delinquent taxes are paid; but the section to which we refer in particular is the Section 5694, the first paragraph of which provides that immediately after each October settlement, the county auditor shall make a tax list and duplicates thereof, other than those upon real estate specifically as such remaining unpaid, as shown by the treasurer's books, and in cases where the amount due and unpaid is in excess of \$100 the list shall be filed with the county recorder, and the same shall constitute a lien on the property of the defaulting taxpayer, and then, in the second paragraph of Section 5694, it provides that the county auditor from time to time shall add to the tax list made pursuant to this section of such taxes omitted in previous *year or years* when and as assessed by him under authority of Section 5398, General Code, or finally assessed by the Tax Commission of Ohio, *and by proper certificates cause the same to be added to the county treasurer's delinquent tax duplicate herein provided for, and in proper cases file notice of lien thereof with the county recorder as herein provided.*

The question we submit to you for your opinion is as follows:

Does the law require the county auditor to file the lien with the county recorder at *any time* during the year in such cases as are provided for in the second paragraph of General Code Section 5694 immediately upon determining that such lien should be filed, or does the law require that such liens shall *only be filed immediately after each October settlement?*

It may aid you in determining just what our question is, if we tell you why we request your opinion. The reason is, that the Tax Commission is continuously making changes in the amount of taxes owed on personal property, tangible and intangible, and we have many cases in which the taxpayer apparently thinks that his taxes are paid in full, but for various reasons, the Tax Commission has increased the amount of taxes which he owes, and the taxpayer discovers that he not only owes more taxes but also that a lien has been filed against him in the county recorder's office, and he not only has not had an opportunity to pay the taxes added by the Tax Commission, but he has not had an opportunity to save himself the embarrassment and added expense of preventing a lien from attaching.

Provided your opinion holds that the lien may be placed against the taxpayer at any time during the year, according to the provisions of Section 5694, do you think the county auditor would be entitled in law to grant the taxpayer a certain length of time in which to pay his tax before filing the lien by giving him written notice?

We felt that this matter was of sufficient importance as to require a uniform procedure throughout the state."

Section 5694, General Code, in so far as is pertinent, reads as follows:

"Immediately after each October settlement, the county auditor

shall make a tax list, and duplicates thereof, of all the taxes, other than those upon real estate specifically as such, remaining unpaid, as shown by the treasurer's books and the list of such taxes returned as delinquent by him to the auditor at such settlement and at the preceding August settlement, and also all such taxes, assessed by him under authority of section 5398 of the General Code, or by the tax commission of Ohio pursuant to law, which were not charged upon the tax lists and duplicates on which such settlements were made, nor previously charged upon a delinquent tax list and duplicates, pursuant to this section. Such tax list and duplicates shall contain the name of the person charged and the amount of such taxes, and penalty thereon, due and unpaid, and shall set forth separately the amount charged or chargeable on the general and on the classified list and duplicate, respectively. He shall deliver one such duplicate to the treasurer on the first day of December annually. The other such duplicate from which shall first be eliminated the names of all persons whose total liability for taxes and penalty is less than one hundred dollars shall be filed by the county auditor on the first day of December in the office of the county recorder of his county and the same shall constitute a notice of lien and operate, as of the date of delivery thereof, as a lien on the lands and tenements, vested legal interests therein, and permanent leasehold estates of each person named therein, having such real estate in such county; but such notice of lien and such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor whose rights have attached prior to the date of such delivery. Such duplicate shall be kept by the county recorder and designated as the personal tax lien record, and indexed under the name of the person charged with such tax. No fee shall be charged by the recorder for the services required under this section.

From time to time the county auditor shall add to the tax list made pursuant to this section all such taxes omitted in a previous year or years when and as assessed by him under authority of section 5398 of the General Code, or finally assessed by the tax commission of Ohio pursuant to law, and, by proper certificates, cause the same to be added to the county treasurer's delinquent tax duplicate, herein provided for, and, in proper cases, file notice of lien thereof with the county recorder, as herein provided. * * *

You will note that in the first paragraph of such section the section requires the county auditor to prepare his duplicate immediately after the October settlement and to reflect thereon:

1. All items of unpaid taxes other than those on real estate, as shown by the current tax duplicate returned by the county treasurer at the time of his October settlement.

2. All items of unpaid delinquent tax of such type as shown by the delinquent duplicate then returned by the county treasurer to the county auditor.

3. All unpaid items of either current or delinquent tax of such type as shown by the duplicates returned by the county treasurer at the time of his August 15th settlement.

4. All items of omitted tax assessed by the county auditor, either by reason of false returns or otherwise (§5398 G. C.) even though they did not appear on former duplicates.

5. Items of tax added by the Tax Commission of Ohio, by authority of law,

even though such items did not appear on a former duplicate.

One of the duplicates so prepared, is required to be filed with the county recorder on the first day of December. Upon such filing the tax items shown thereon become a lien on the real estate and permanent leasehold estates of the respective taxpayers.

The second paragraph of such Section 5694, General Code, authorizes the county auditor, when at any time subsequent to the delivery of the copy of such duplicates by the county auditor to the county treasurer and county recorder he shall discover an item or items of omitted taxes or a final assessment is made by the Tax Commission, to issue a certificate to the county treasurer of such addition and to cause the addition to be made on the treasurer's duplicate and on the duplicate delivered to the county recorder, which constitutes the notice of the lien.

It is by reason of the provisions of the second paragraph of such Section 5694, General Code, that your question arises. In the first paragraph of such section it is stated that the lien of the tax shall be "as of the date of the delivery thereof." In the second paragraph of such section the language is that the county auditor shall "from time to time * * in proper cases, file notice of lien thereof with the county recorder, as herein provided." It would appear to me that when the notice of the unpaid tax item is filed with the county recorder, it becomes a lien as of such date. It is an established rule of statutory interpretation that some effect if possible, should be given to all the language of a statute. *Stanton vs. Realty Company*, 117 O. S., 345, 349; *State ex rel. Spira vs. Commissioners*, 32 O. App. 382, Syl. 1. What, then, is the meaning to be given to the phrase "in proper cases" as it appears in Section 5694, General Code, if the county auditor is to add all such items to the duplicate forming the notice of lien with the county recorder?

Section 5398, General Code, in discussing the method of collecting the amount of taxes assessed or added by the county auditor by reason of his findings concerning a false return, uses the following language:

"He (the county auditor) shall assess the sum so omitted for any of said years at the rate of taxation belonging to such year and enter the amount accordingly on the proper tax list in his office, giving a certificate therefor to the county treasurer *who shall collect it as other taxes*.

To the amount so ascertained for any of said years he shall add fifty per cent., assess the omitted sum so increased by said penalty at the rate of taxation belonging to such year, and accordingly enter the amount on the proper tax list in his office, giving a certificate therefor to the county treasurer *who shall collect it as other taxes*.

If the auditor finds that the error or omission was made without intention to mislead, deceive or defraud for the purpose of evading taxation on the part of the person whose duty it was to make the return, he may remit any penalty for such year, but no such penalty shall be remitted unless such person shall first pay to the county all taxes lawfully due and payable within sixty days after the amount of said lawful taxes are determined and placed on the tax list." (Italics, the writer's.)

Sections 2596 and 2683, General Code, do not direct a settlement between the county treasurer and the county auditor concerning moneys collected by reason of such auditor's pay-in warrants until the following settlement. It would, therefore, appear that as to omitted taxes added by the county auditor, the county

auditor is not required to file a notice of tax lien with the county recorder until such taxes have become delinquent.

Section 5395, General Code, authorizes the Tax Commission to make a final assessment certificate concerning property of which a preliminary assessment certificate had been made. If the final assessment is in excess of the preliminary certificate assessment, the Tax Commission is directed to certify such deficiency assessment to the county auditor of the county in which the taxpayer resides or from which the tax is to be collected. Such section provides that:

“He (the county auditor) shall enter all ‘deficiency’ items comprised in such final assessment certificate on the proper tax lists in his office, together with the amount of taxes so computed thereon, and shall give a certificate of all such amounts to the county treasurer *who shall collect them as other taxes.*” (Italics, the writer’s.)

The county treasurer is not required to make settlement of such taxes until his settlement next after his receipt of the pay-in warrant from the county auditor. (§§2602 and 2683, G. C.) Inasmuch as the duplicate list filed with the county recorder which constitutes the tax lien notice is one of delinquent taxes and the penalty for nonpayment of taxes does not attach until after the semi-annual settlements between the county treasurer and the county auditor, it would appear to me that the legislature inserted the language “in proper cases” for the purpose of expressing its intent to authorize the addition of delinquent taxes to such lien notice rather than to create a lien before the taxpayers had received an opportunity to make payment.

Specifically answering your inquiry, it is my opinion that:

1. When the county auditor after the settlement between the county treasurer and himself, determines, pursuant to the provisions of Section 5398, General Code, that certain assessment items are due from a taxpayer, he is not required to add such assessed items to the delinquent tax lien record of delinquent personal property taxes on file with the county recorder until the county treasurer in his settlement has returned such items of taxes as unpaid (§5694, G. C.)

2. When, after the October settlement between the county auditor and the county treasurer, the Tax Commission, pursuant to the authority of Section 5395, General Code, certifies a deficiency assessment of taxes to the county auditor, the county auditor is not required by the provisions of Section 5694, General Code, to add such items to the delinquent tax lien notice record on file with the county recorder until the county treasurer in his settlement with the county auditor, has returned such tax item as unpaid.

Respectfully,

JOHN W. BRICKER,

Attorney General.