

1100.

TAX AND TAXATION—PERSONAL PROPERTY—PENALTY ON FIRST HALF TAXES NOT PAID BY DECEMBER 20 OR JANUARY 20, WHEN TIME EXTENDED, APPLIES TO SECOND HALF ALSO.

SYLLABUS:

Under Section 2657, General Code, as amended in 113 O. L., where the first half of taxes on personal property is not paid on or before the twentieth day of December or the twentieth day of January, in case the time is extended, the ten per cent penalty attaches and applies to the second half of the taxes, as well as the first half.

COLUMBUS, OHIO, October 24, 1929.

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

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

“Section 2653 of the General Code, provides that each person charged with taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereof on or before the 20th day of December, or one-half thereof before such date, and the remaining half thereof on or before the 20th day of June next ensuing.

Section 2657 of the General Code, as amended in 113 O. L., 501, provides for the extension of the time of the payment of taxes from December 20th to January 20th and from June 20th to July 20th. This section further provides that in cases where the first one-half of personal property tax has not been paid on the 20th day of December or on the 20th day of the following January if the time has been so extended, the whole amount of the personal property tax for the current year, together with a penalty of 10% thereon, shall be due and delinquent, the penalty shall be added by the county auditor, and the taxes and penalty forthwith collected by the county treasurer.

Question: In case the first one-half of the taxes on personal property is not paid on or before the 20th day of December, or on or before the 20th day of January in case the time is extended, does the 10% penalty apply to the second half of the taxes due and payable in June as well as to the first half due and payable in December?”

Section 2657, General Code, to which you refer, was amended by the Eighty-eighth General Assembly, in House Bill No. 262, effective July 23, 1929, the title of which reads:

“To amend Sections 2657, 5678, 5679 and 5694 of the General Code, to repeal Section 2656 of the General Code, relative to penalties for non-payment of real and personal property taxes and assessments, and duplicate of unpaid personal property taxes to be made.”

It thus appears, from the title of House Bill No. 262, that the Legislature fully intended to change certain sections relative to non-payment of taxes.

In amending Sections 5678, and 5679, General Code, the Legislature made assessments against real estate as well as taxes on real estate, subject to the penalty clause.

In repealing Section 2656, General Code, the Legislature did away with the additional penalty of five per cent, which went to the county treasurer when he collected

delinquent taxes either on real or personal property by distress, action, rule of court or other special effort.

It will be observed that in House Bill No. 262, the Eighty-eighth General Assembly, did not disturb Section 2653, General Code, which provides that taxes may be paid in two equal semi-annual installments.

Section 2653, General Code, reads as follows :

“Each person charged with taxes on a tax duplicate in the hands of a county treasurer, may pay the full amount thereof on or before the twentieth day of December or, one-half thereof before such date, and the remaining half thereof on or before the twentieth day of June next ensuing, but all road taxes so charged shall be paid prior to the twentieth day of December.”

The General Assembly did, however, amend Section 2657, General Code, to read as follows :

“The county commissioners of any county by resolution spread upon their journal may extend the time of payment of taxes from June twentieth to July twentieth of the same year and from December twentieth to January twentieth of the following year.

In all cases where the first half of the personal property taxes has not been paid on the twentieth day of December or on the twentieth day of the following January if the time has been so extended, the whole amount of personal property taxes for the current year, together with a penalty of ten per cent thereon, shall be due and delinquent, the penalty shall be added by the county auditor, and the taxes and penalty forthwith collected by the county treasurer.

When the first half of the personal property taxes charged on the tax duplicate has been paid promptly, but the remainder of such tax is not paid on or before the twentieth day of June or the twentieth day of July if the time has been so extended, a penalty of ten per cent thereon shall be added by the county auditor, and the taxes and penalty forthwith collected by the county treasurer.”

Prior to its amendment, Section 2657, General Code, read as follows :

“The county commissioners of any county by resolution spread upon their journal may extend the time of payment of taxes from June twentieth to July twentieth of the same year and from December twentieth to January twentieth of the following year. In all cases where such half of a tax other than on real estate has not been paid on the twentieth day of December or on the twentieth day of the following January, if the time has been so extended, the whole amount of taxes other than on real estate for the current year so charged shall be due and delinquent, and shall be collected in the manner and with the penalty provided in the preceding section.”

While Section 2657, supra, prior to the 1929 amendment, provided that the entire personal property tax would become due and delinquent if the first half was not paid promptly, the Legislature now has given additional emphasis to the advisability of paying the first half of the personal property tax promptly by providing that the ten per cent attaches to the tax for the entire year if this is not done.

Specifically answering your question therefore, I am of the opinion that in case

the first half of the tax on personal property is not paid on or before the twentieth day of December, or on or before the twentieth day of January in case the time is extended, the ten per cent penalty attaches and applies to the second half of the taxes as well as the first half.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1101.

TOWNSHIP TRUSTEES—MAY ACT AS A BODY IN MAINTAINING ROADS—NUNC PRO TUNC ENTRY TO SHOW TOWNSHIP DISTRICTS—TWO MEMBERS ACTING IN ONE DISTRICT VALID—SAME PROCEDURE IN REPAIRING COUNTY ROADS PERMISSIBLE.

SYLLABUS:

1. *Under Section 3370, General Code, it is not mandatory that the trustees employ one of the methods of procedure in connection with roads set out in the section, but they may proceed to act as a board in such matters.*

2. *When the trustees have actually divided the township into districts and failed to record such action upon their minutes, a nunc pro tunc entry may be made showing such action.*

3. *In the event the trustees have divided the township into districts and a majority acts upon any proceeding instead of the individual member designated, such proceeding is not invalid.*

4. *In maintaining and repairing county roads, with the approval of the county commissioners, the trustees may proceed in the same manner as they proceed with township roads.*

COLUMBUS, OHIO, October 25, 1929.

HON. HOWARD GOLDSBERRY, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon the following inquiries:

"1. Is it mandatory under Section 3370 of the General Code that the township trustees adopt one of the three methods designated for the maintenance and repair of township roads or may the trustees act as a body?

2. In the event the township trustees agree among themselves to divide up the township into districts, as designated by method number two, under Section 3370 of the General Code, and do not enter said agreement upon their minutes, but do act thereunder, is such act illegal?

(a) If two trustees act together upon the repair of the road under the same conditions set out in paragraph two, would their acts be illegal?

(b) If the township trustees were maintaining a county road with the permission and consent of the county commissioners and the cost of the repair was less than \$50.00 would the same rule apply as to township road under the conditions set out in paragraph two and in Section A of paragraph two?"

Section 3370 of the General Code, to which you refer, provides: