

Secretary of State of the name and address of the new owner and return to the Secretary of State the registration certificate for cancellation. The original owner shall also remove number plates from a motor vehicle upon transfer of ownership of such vehicle. Should the original owner make application for the registration of another motor vehicle within thirty days after such cancellation, he may file a new application accompanied by a fee of one dollar, and pay the tax thereon, less the amount of the tax that would be collected on account of the vehicle transferred, on the date of such application."

Section 6298, General Code, provides that upon the filing of the application and the payment of the tax the commissioner or his deputy shall assign to such motor vehicle a *distinctive number* and issue a certificate of registration, and two number plates, duplicates of each other to the owner.

According to your statement, this was a completed transaction on December 15th. The owner having purchased a new car thereafter and before January 1st, made application on January 3rd to have his transaction theretofore made on December 15, 1926, apply to his new car instead of the old one.

It is my opinion that the deputy commissioner referred to in your letter was within his rights in refusing the request of the owner of the car on January 3, 1927, if A refused to file the necessary "new application accompanied by a fee of one dollar" as provided in Section 6294-1, *supra*. From your statement, the new car being of the same horse power as the old, it was unnecessary to pay any additional tax.

Under the provisions of Section 6294-1, General Code, providing for the transfer he was entitled to file a new application accompanied by a fee of one dollar and have the transfer properly made to the new car.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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TAX DUPLICATE—EFFECT OF LATE DELIVERY TO COUNTY TREASURER.

SYLLABUS:

The delivery of the tax duplicate to the county treasurer at a later date than that prescribed by statute does not absolve the county treasurer from the duty of publishing the tax rates as required by Sections 2648 and 6252, General Code.

COLUMBUS, OHIO, March 16, 1927.

HON. D. A. BAIRD, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"We are requesting your information as to the interpretation of General Code Section 6252 and Section 2648, in view of the following circumstances in this county.

The property in Lorain county has been re-appraised and the tax rates have been changed in the various subdivisions in the county, as well as for

the entire county. Due to the re-appraisal not being made until late, tax duplicates were not made up by the auditor and presented to the treasurer in time for collection of taxes at the usual period and all of the rates will not be determined until sometime after March 12th, when the books of the treasurer are closed. The treasurer has the proposition of advertising the notice of the rates of taxation.

Inasmuch as the rates of taxation for the county will not be determined until after taxes have been paid by many of the sub-divisions in the county and until after the books are closed by the treasurer, is it necessary for the treasurer of the county to publish the rates of taxation for that county in compliance with the above two sections of the General Code?

The treasurer has not published the rates of taxation for a part of the districts inasmuch as it would necessitate a great lot of expense to re-publish the rates when all the taxes are collected. So the question now resolves itself into whether the treasurer should publish the notice of the rates of taxation for Lorain County after the rates of taxation have been determined and the books closed and a great many of the tax payers have paid the rates upon their property."

I do not understand how the taxes could have been collected before the rates were determined.

Section 2648, General Code, provides :

"Upon receiving from the county auditor a duplicate of taxes assessed upon the property of the county, the county treasurer shall immediately cause notice thereof to be posted in three places in each township of the county, one of which shall be at the place of holding elections in such township, and also be inserted for six successive weeks in a newspaper having a general circulation in the county. Such notice shall specify particularly the amount of taxes levied on the duplicate for the support of the state government, the payment of interest and principal of the public debt, the support of state common schools, defraying county expenses, repairing of roads, keeping the poor, building of bridges, township expenses and for each other object for which taxes may be levied on each dollar valuation."

It is noted that this section specifically commands the county treasurer to publish the rates of taxation in a newspaper having general circulation, etc. Section 6252 provides that notice of the rates of taxation shall be published in two newspapers of opposite politics at the county seat, if there be such newspapers published thereat. It is evident that under the provisions of these two sections it is mandatory upon the county treasurer to publish the rates of taxation.

Section 2648, General Code, should be construed as in *pari materia* with General Code Section 6252, and the two sections are to be construed together. *State vs. Commissioners*, 7 O. N. P., 239.

In the case of *State ex rel. vs. Roose*, 90 Ohio St., 345, the question to be determined was whether the county auditor after his tax lists were made up could be compelled to place an additional levy upon said tax lists and duplicate. The unanimous opinion of the court was :

"The placing of this levy on the tax duplicate is a mere ministerial duty. In the discharge of this duty the county auditor has no discretion. If he did not perform this official duty within the time the law directed him to do it, he must do it now. That this will give rise to confusion and impose additional

labor upon the auditor in reforming his tax lists and upon the county treasurer in collection of the same is unfortunate, but it does not repeal the law, defeat the levy or destroy the lien of the tax upon the property subject thereto."

In the case of *State ex rel. vs. Mittendorf, et al., Commissioners*, 102 Ohio St., 229, the court in construing Section 5696, General Code, providing that the duty to publicly read the list of persons delinquent in the payment of taxes on personal property is mandatory in the second paragraph of the syllabus stated:

"The requirement of that section that the reading of the list occur at each September session of the board of county commissioners is directory merely, and the board of commissioners having failed to read the list during the September session it is their duty to read the list at a later date."

Marshall, C. J., in rendering this opinion, stated:

"It was of course the commissioners' duty to read the list during the September session, and having failed to read it during that session there is still a duty unperformed which must be performed. * * * We are of the opinion that while the act itself, that is to say the act of reading the list, is mandatory and imperative, the time of the performance of the act is directory merely. While it was their duty to read it at the time prescribed by the statute, having failed in that it is still their duty to read it at the earliest moment thereafter, when their attention is called to it. * * * There are a very great many statutes commanding public officials to perform acts at certain fixed times where time is not of the essence of the matter, and in such instances the provisions are directory merely."

In an opinion of this department, *Opinions of Attorney General, 1918, Vol. II, page 1611*, it was held:

"The treasurer may be compelled by mandamus to make the publication of the tax rate in two newspapers, as provided in Sections 2648 and 6252."

In an opinion of this department, *Opinions of Attorney General, 1919, Vol. II, page 1467*, in construing Section 2648, it was held:

"It is the opinion of this department that compliance with this section would require the repetition of the notice. In effect, the revision of the rates even after the duplicate is in the hands of the treasurer for collection would constitute a new delivery of the 'duplicate of taxes assessed.' * * * Even a directory statute should be complied with, and the expenditure of funds for legal advertising, etc., involved in such a compliance would be perfectly legal."

You are therefore advised that it is my opinion that the delivery of the tax duplicate to the county treasurer at a later date than that prescribed by statute does not absolve the county treasurer from the duty of publishing the tax rates as required by Sections 2648 and 6252, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.