

It appears that a part of the board of education in the district in question was defeated for reelection at the November, 1933, election, and an attempt, apparently, was made to foist on the new board a transportation contract extending for two years beyond the term of the original contract, and even beyond the entire life of the incoming board.

It is difficult to lay down precise rules by which it may be determined whether a public officer or board may enter into contracts beyond their terms, in the absence of express statutory regulation thereof, other than that such contracts if justified at all, must be made in good faith and in the public interest, thereby making that determination depend upon the facts peculiar to the situation. In the instant case the facts so clearly show lack of good faith and total disregard of the public interest and the rights of the succeeding board as to render the action of the board in cancelling the existing transportation contract and entering into a new contract on December 3, 1933, to be unauthorized and void.

I am therefore of the opinion that the contracts which the board attempted to make on December 2, 1933, were unauthorized and are not valid and binding contracts.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2477.

LIFE TENANT—WHERE TAXES UNPAID ON PROPERTY PRIOR TO DEATH OF LIFE TENANT TAXES PERSONAL OBLIGATION OF DECEDENT—DUTY OF ADMINISTRATOR OR EXECUTOR TO PAY TAXES FROM DECEDENT'S ESTATE.

SYLLABUS:

1. *When the life tenant died on the sixth day of February, 1932, without having paid the taxes assessed against the real estate in which he had a life interest for the tax year 1931, such taxes are a personal obligation of such decedent (Section 5680, General Code), and by reason of the provisions of Section 10509-170, General Code, it is the duty of the executor of such decedent's will or the administrator of his estate to file with the Probate Court, along with his account as such executor, certificates of the county treasurer and county auditor showing such taxes to have been paid. (Opinion No. 546 appearing in Opinions of the Attorney General for 1933, approved and followed.)*

2. *Since the amendment of Section 2658, General Code, by the 89th General Assembly, the county treasurer cannot maintain an action in the nature of a suit to recover such taxes, as distinguished from special assessments against a life tenant or his executrix.*

COLUMBUS, OHIO, April 9, 1934.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion on the following question:

"In the year 1889 a widow was given a life estate in 320 acres of land in Putnam County, Ohio. Said widow occupied, and received the rents and profits of said real estate from said time to and including the rents and profits for the year 1931, and died on the 6th day of February, 1932. The taxes for the year 1931 went unpaid, became delinquent and a penalty attached, all previous taxes having been paid by the life tenant.

Can the Treasurer of Putnam County maintain an action against the Executrix of the said deceased life tenant to recover the taxes for the year 1931? After reading Section 5680 of the General Code of Ohio, and your opinion rendered September 21, 1933, it is my impression that a life tenant or his estate is personally liable for the delinquent taxes which accrued prior to the death of the life tenant."

In the case of *Robinson, Exr. vs. Bowler*, 18 O. C. C. (N. S.) 372; affirmed without opinion in 88 O. S. 614 (decided November 27, 1911) the court had before it a question somewhat similar to that set forth in your request. The syllabus of such case reads:

"Plaintiff was entitled to the remainder in certain real estate, subject to a life estate in another. The life tenant died October 24, leaving a will of which defendant was executor. Before December 20, 1909, plaintiff requested defendant to pay the taxes for 1909, payable at that time, which defendant refused to do, the same remaining unpaid until March 16, 1910, when plaintiff paid all the taxes for 1909 and penalty attached for non-payment of the part due December 20, 1909, and presented his claim therefor to the executor who rejected it. Suit being brought upon the claim, HELD: The taxes were a debt of the estate of the life tenant, and it was the duty of her executor to pay the same; the remainderman was not a volunteer in paying them and was entitled to recover."

The court in such opinion reasoned that under the provisions of Section 2658, General Code, as it then existed, there was an obligation on the part of the owner of a parcel of real estate to pay the tax assessed against such parcel, since such tax could be collected by the county treasurer "by distress or otherwise" by reason of the provisions of Section 2658, General Code. The court holds that by reason of such provision the decedent "owed the taxes for the entire year; that this was in the nature of a debt". (See page 374). It is to be noted however, that the 89th General Assembly (114 O. L. 828) amended such Section 2658 by deleting from such section the right to distrain for real estate taxes. It is doubtful if the court could at the present time reach such conclusion upon the construction of Section 2658, General Code, as it now exists. While there is considerable doubt as to whether taxes assessed against real estate are a debt of the owner, since such amendment of Section 2658, General Code, (Section 6, Cincinnati Law Review, 251), yet by reason of the enactment of Section 10509-176, General Code, (114 O. L. 440, Amended in 114 O. L. 440), there appears to be a statutory obligation on the part of each executor or administrator to pay all taxes against the estate of the decedent. The language of such section, in so far as germane, reads:

"In rendering such account, every executor or administrator shall produce vouchers for debts and legacies paid, * * together with certificates from the county treasurer and county auditor showing * * that all taxes charged against the estate have been paid, which shall be filed with the account, and they * * be deposited and remain with the account."

From the language of this section it is evident that "*all taxes charged against the estate*" of the decedent must have been paid before the executor or administrator may file his account. Section 10509-170, General Code, makes the duty of filing the account mandatory. It may well be deduced that the estate of a decedent may not be "closed" until all taxes "against the estate" have been paid.

In my opinion No. 546 rendered April 11, 1933, I held as stated in the third paragraph of the syllabus, that:

"The certificates of the county auditor and county treasurer filed with the probate court pursuant to the provisions of Section 10509-176, General Code, must certify that all taxes, including real estate taxes charged against property coming into the control of the executor, charged against the estate of the decedent have been paid."

After a review of such opinion and examination of the statutes enacted by the legislature since such time, I am not persuaded that such opinion is an inaccurate interpretation of such statutes.

The question necessarily arises as to whether the taxes in question are "taxes against the estate of the decedent." I might call your attention to the following language contained in Section 5680, General Code:

"Each person shall pay tax for the land or town lots of which he is seized for life * *"

From the language of this section it appears that there is a direct personal obligation on the part of the life tenant in real estate to pay the taxes on such real estate. *Robinson vs. Bowler, supra.*

Your question is specifically whether the county treasurer may sue the executrix of the estate of the life tenant for the taxes assessed against the lands during the lifetime of such tenant. Since the amendment of Section 5678, General Code, above referred to, I am unable to find any provision of law authorizing a suit against a taxpayer for real estate taxes as distinguished from "special assessments" against real estate. I must therefore answer your specific question in the negative since the county treasurer has only such powers as are given him by statute.

However, if, by your inquiry, you intend to inquire whether the county treasurer may press the claim for payment in the probate action in which the estate is being administered another answer is evident. From what I have stated above, it is evident that such taxes are, by statute, required to be paid from such estate before the approval of the final account by the probate court. I see no legal impediment to the filing of exceptions to the final account of the executrix when such taxes have not been paid.

I am, therefore, of the opinion in specific answer to your inquiry:

(1) When a life tenant died on the sixth day of February, 1932, without having paid the taxes assessed against the real estate in which he had a life interest for the tax year 1931, such taxes are a personal obligation of such decedent (Section 5680, General Code), and by reason of the provisions of Section 10509-170, General Code, it is the duty of the executor of such decedent's will or the administrator of his estate to file with the Probate Court, along with his account as such executor, certificates of the county treasurer and county auditor showing such taxes to have been paid. (Opinion No. 546 appearing in Opinions of the Attorney General for 1933, approved and followed.)

(2) Since the amendment of Section 2658, General Code, by the 89th General Assembly, the county treasurer cannot maintain an action in the nature of a suit to recover such taxes, as distinguished from special assessments against a life tenant of his executrix.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2478.

CITY SOLICITOR—NOT REQUIRED TO ACT AS LEGAL ADVISER TO BOARD OF EDUCATION WHEN—MAY BE COMPENSATED BY BOARD FOR LEGAL SERVICES.

SYLLABUS:

1. In a municipality which has adopted a charter, which charter does not provide that the solicitor or law director of the said municipality shall act as adviser to and attorney for the board of education of the school district of said city and does not contain a provision expressly imposing upon the said solicitor or law director the duties imposed by the general laws of the state, it is not the duty of the said solicitor or law director to act as adviser to and attorney for the said board of education without compensation.

2. Under such circumstances the said board of education may lawfully employ the said solicitor or law director as its adviser and attorney and may lawfully pay him reasonable compensation for his services as such.

COLUMBUS, OHIO, April 9, 1934.

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:

"We are enclosing herewith a copy of the charter of the City of Maple Heights, Cuyahoga County; also copy of an agreement entered into by the Council of the City of Maple Heights and an attorney, as Director of Law for this city.

QUESTION: Is such attorney required to act for the board of education of the Maple Heights City School District in accordance with the provisions of Section 4761 of the General Code, without compensa-