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TREASURER, COUNTY—POSTAGE FOR TAX RECEIPTS—
§323.11 R.C. SELF-ADDRESSED ENVELOPE FORWARDED
WITH PAYMENT.

SYLLABUS:

Section 323.11, Revised Code, requires the county treasurer to pay the postage required to send tax receipts to those persons who have paid their taxes by mail, and have supplied the treasurer with a self-addressed envelope.

Columbus, Ohio, January 8, 1959

Hon. Edward D. Mosser, Prosecuting Attorney
Harrison County, Cadiz, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

“Section 323.11 of the Ohio Revised Code, entitled *Receipt for Payment of Taxes*, reads in part as follows:

“* * * If any tax is paid to the treasurer by mail, and the person paying such tax encloses with the payment an addressed envelope, the treasurer shall enclose a receipt for the taxes in such envelope, with sufficient postage, and deposit it in the mail * * *.”

“Now, Sir, my question is this: Who places on and/or in the envelope and pays for the stamps on and/or in the envelope?”

Section 1090, Revised Statutes, which preceded Section 2650, General Code, and Section 323.11, Revised Code, contained no provision for sending a receipt to a taxpayer by mail, and of course no mention of postage. The Legislature amended this provision in 1931, and Section 2650, General Code, as then amended, read in pertinent part:

“* * * If any tax be paid to the county treasurer by mail, and if the person so paying such tax enclose with such payment an addressed envelope, the county treasurer *shall enclose a receipt for such taxes in such envelope with sufficient postage* and deposit it in the mail. No receipt given by the county treasurer for payments made otherwise than in lawful money or in the notes specified in section 2646 of the General Code shall be valid unless and

until the lawful monies represented by such payment are received into the county treasury or a county depository.”

It is to be noted, this statute specifically authorizes the county treasurer to return the receipt by mail, should the taxpayer have mailed the payment and included a self-addressed envelope, and that the envelope in which it is so returned is to be one “with sufficient postage.” This suggests that the postage is to be affixed to such envelope by the treasurer, and that the cost thereof is to be a part of the administrative expense of his office.

This section as codified in 1953, as Section 323.11, Revised Code, provides in part :

“* * * If any tax is paid to the treasurer by mail, and the person paying such tax encloses with the payment an addressed envelope, the treasurer shall enclose a receipt for the taxes in such envelope, with sufficient postage, and deposit it in the mail. * * *”

It is to be observed that in the 1953 revision two commas were added, one preceding the phrase in question, and one following it. In Section 1.24, Revised Code, there is an express legislative disclaimer of intent to effect substantive change. Nonetheless the addition of these commas leaves this language quite free of ambiguity, and it must be construed according to its plain meaning if it be thought that this did, in fact, effect a substantive change. *State, v. Williams*, 104 Ohio St., 232.

It has come to my attention that a substantial number of the county treasurers currently require the taxpayer to pay the postage for the return receipt. Consequently, we must give some thought to the doctrine of “administrative interpretation.”

In 37 Ohio Jurisprudence, 699, Section 389, there is the following statement :

“Executive or departmental construction may only be resorted to in aid of interpretation. Such construction is not to be considered where the statute is clear and explicit in its language and its meaning is not doubtful. The scope and comprehensiveness of the statute may not be extended by such executive or administrative interpretation. A custom of a department, however long continued by successive officers, must yield to the positive language of the statute * * *”

Cited in support of these statements are *Job v. Harlan*; 15 Ohio St., 485; *Industrial Commission v. Brown*, 92 Ohio St., 309; *State, ex rel.*

Merydith v. Dean, 95 Ohio St., 108; *Shafer v. Streicher*, 105 Ohio St., 528; *Industrial Commission v. Snyder*, 113 Ohio St., 405; *State, ex rel. Crabbe v. Hydraulic Co.*, 114 Ohio St., 437.

Thus, it can be seen the doctrine of "administrative interpretation" only applies where the statute is definitely ambiguous. This is not the case with which we are here confronted. The statute is not ambiguous, but clear, and it is accordingly my opinion and you are advised that Section 323.11, Revised Code, requires the county treasurer to pay the postage required to send tax receipts to those persons who have paid their taxes by mail, and have supplied the treasurer with a self-addressed envelope.

Respectfully,
WILLIAM SAXBE
Attorney General