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1. TAX COLLECTIONS—"SUSPENSION FUND"—ANY TAX-PAYER MAY PAY INTO COUNTY TREASURY ON DRAFT OF COUNTY AUDITOR SUCH SUMS AS ARE OWED BY HIM TO COUNTY—ADVANCE PAYMENTS—DELINQUENT TAX PAYMENTS — OFFICE, COUNTY TREASURER "OPEN" FOR TAX COLLECTION — ANY SUCH SUMS SHOULD BE CREDITED TO "UNDIVIDED GENERAL TAX FUND"—SECTIONS 2567, 2568, 2645, 2649, 2649-1 G.C.
2. COUNTY COMMISSIONERS—WITHOUT AUTHORITY TO AUTHORIZE COUNTY AUDITOR TO SET UP "SUSPENSION FUND" OR TO REQUIRE COUNTY TREASURER TO RECEIVE TAX PAYMENTS AT TIMES NOT DESIGNATED BY STATUTE.

SYLLABUS:

1. Under the provisions of Sections 2567 and 2645, General Code, any taxpayer may pay into the county treasury on the draft of the county auditor such sums as are owed by him to the county, either as advance tax payments or as delinquent tax payments, notwithstanding the fact that, under the provisions of Sections 2649 and

2649-1, General Code, the office of the county treasurer is not then "open" for the collection in the usual manner, of taxes listed on the tax duplicates. Any such sums so received by the treasurer should be credited to the "undivided general tax fund" as provided by Section 2568, General Code.

2. The county commissioners are without statutory authority either (a) to authorize the county auditor to set up a "suspension fund" to which such special tax payments may be credited, or (b) to require the county treasurer to receive, at times other than as designated in Sections 2649 and 2649-1, General Code, tax payments to be credited by him on the tax duplicates transmitted to him by the county auditor.

Columbus, Ohio, September 4, 1952

Hon. Danny D. Johnson, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The County Commissioners have authorized the County Auditor of Tuscarawas County to set up a suspension fund, under sections 2567 and 2568 of the General Code of Ohio, for the collection of real and public utility taxes, and general and classified property taxes during the time said tax books are closed for our semi-annual and annual settlements, and have requested that the County Treasurer keep his tax books open at all times for the collection of the above mentioned taxes.

"In view of sections 2649 and 2649-1 and section 2645 of the General Code of Ohio, I desire your opinion as to whether the County Commissioners are correct in ordering the Auditor to set up such a suspension fund."

Sections 2567 and 2568, General Code, under the provisions of which you indicate the county commissioners claim the authority to act in the matter of setting up a "suspension fund," read as follows:

Section 2567, General Code:

"Except moneys collected on the tax duplicate, the auditor shall certify all moneys into the county treasury, specifying by whom to be paid and what fund to be credited, charge the treasurer therewith and preserve a duplicate of the certificate in his office. Costs collected in penitentiary cases which have been paid by the state or to be so paid, shall be certified into the treasury as belonging to the state."

Section 2568, General Code:

“The county auditor shall keep an accurate account current with the treasurer of the county, showing all moneys paid into the treasury, the amount thereof, the time when, by whom, from what source and to what fund paid, and of all moneys paid out, showing the amount thereof, the time when, to whom, for what purpose and from what fund paid. Upon the receipt of the daily statement of the county treasury required by law, the auditor shall enter on his account current as a charge to the treasurer the amount of tax collected as shown by such statement, in the following manner: Collection of liquor taxes, to be credited to the ‘undivided liquor tax fund,’ collections of cigarette tax, to be credited to the ‘undivided cigarette tax fund,’ collections of inheritance tax to be credited to the ‘undivided inheritance tax fund;’ and collections of other taxes and assessments of whatever kind to be credited to the ‘undivided general tax fund.’”

Another statutory provision pertinent to your inquiry is found in Section 2645, General Code, which reads in part:

“Except payments of taxes charged on the tax duplicates and made before the return by the treasurer of the delinquent list for unpaid taxes and except advance payments of taxes, all payments of money into the county treasury shall be on the draft of the county auditor in favor of the county treasurer. The auditor shall preserve a duplicate copy of each such draft and the auditor and treasurer shall each keep an accurate record of the number, date and amount thereof and of the fund in favor of which it is drawn, * * *.”

A question somewhat similar to that here presented was under consideration in Opinion No. 3122, Opinions of the Attorney General for 1931, page 507, the syllabus of which reads:

“Where an executor or administrator of the estate of a deceased person who lists the property of said estate for taxes in the manner provided by Sections 5370 and 5372-1, General Code, desires to pay the taxes on the property so listed in order to file his final account and receive his discharge as such executor or administrator, before the tax duplicate for the current year is made up by the county auditor and transmitted by him to the county treasurer, he may, if the amount of such taxes can be ascertained, pay the same into the county treasury on a draft or pay-in order issued by the county auditor in the manner provided by Sections 2567 and 2645, General Code.”

In this opinion the writer, after noting the pertinent provisions of Section 2567 and 2645, General Code, both of which are quoted above, said pp. 508, 509:

“The sections of the General Code, above quoted, authorize the payment into the county treasury on the certificate or pay-in order of the county auditor of moneys other than taxes paid in on the tax duplicate after the same has been delivered to the county treasurer. Although the practice of receiving and paying into the county treasury, tax moneys otherwise than by the payment of taxes on the duplicate in the hands of the county treasurer is not at all common, and the same has, perhaps, been discouraged by the county officers charged with the duty of assessing and collecting taxes, the provisions of the sections of the General Code, above quoted, are ample authority for the payment on the order of the county auditor of tax moneys in a case such as is here presented, before the tax duplicate is made up and delivered to the county treasurer.

“Such tax moneys so paid into the county treasury on a certificate or order of the county auditor should be credited to the ‘undivided general tax fund’; and if the county auditor makes his semi-annual settlement with the county treasurer in the manner provided for by Section 2602, General Code, he should credit the tax moneys thus paid into the county treasury on his order to the taxing districts or subdivisions entitled thereto.

“Obviously, in a case such as that here presented, the provisions of Sections 2567 and 2645, General Code, above quoted, will not meet the situation unless the tax returns for the year have been determined and the county auditor, by his certificate or pay-in order, can specify the amount of money to be paid into the county treasury as taxes for the current year on the property listed by the executor or administrator of the estate.

“By way of further answer to the question presented in said communication, it is suggested that when the taxes on property listed by the executor or administrator of such estate are paid into the county treasury on a pay-in order of the county auditor before the tax duplicate is made up and delivered to the county treasurer, such taxes should be entered on the duplicate with a memorandum thereon with respect to the payment of such taxes into the county treasury on a pay-in order of the county auditor, so that the county treasury will be charged but once with respect to said taxes, to wit: the charge made against him when said taxes are paid into the county treasury on said pay-in order, as is provided for by Section 2567, General Code.”

From the foregoing discussion it is evident that the writer of the 1931 opinion has pointed out the statutory authority by which taxes may

be paid into the county treasury at times and under circumstances other than the ordinary and usual method provided by law. Such ordinary and usual method of collection of taxes is indicated by the provisions of Sections 2648, 2649 and 2649-1, General Code. These sections are as follows:

Section 2648, General Code :

“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, expressed in dollars and cents for each one hundred dollars of valuation.”

Section 2649, General Code :

“The office of the county treasurer shall be kept open for the collection of real property taxes and assessments and public utility property taxes from the time of delivery of the duplicate to the treasurer until the twentieth day of June, excepting during such time for which it may be necessary to close such office for the purpose of the February settlement of such taxes.”

Section 2649-1, General Code :

“The office of the county treasurer shall be kept open for the advance payment of general personal property taxes and classified property taxes from the fifteenth day of February until the first day of May and from the tenth day of May until the time of the delivery of the duplicates therefor to the treasurer; and for the collection of taxes charged on such duplicates, from the time of delivery thereof until the twenty-first day of September.”

It is clear that the reason for the closing of the treasurer's office with respect to this ordinary and usual method of tax collection is to give the treasurer and the auditor the opportunity to proceed in an orderly manner to arrive at a settlement with each other of the precise

amount of (a) tax money collected by the treasurer with which he is to stand charged, and (b) a list of all delinquent taxes. Provision for these settlements is found in Sections 2596 and 2602, General Code, which read as follows:

Section 2596, General Code:

“On or before the fifteenth day of February and on or before the tenth day of August of each year, the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of real property taxes and assessments and public utility property taxes with which such treasurer is to stand charged. At each August settlement, the auditor shall take from the duplicate previously put into the hands of the treasurer for collection a list of all such taxes and assessments as the treasurer has been unable to collect, therein describing the property on which such delinquent taxes and assessments are charged as described on such duplicate and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes and assessments should not be collected. Such last-mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor.”

Section 2602, General Code:

“On or before the tenth day of May and on or before the tenth day of October of each year the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of general personal and classified property taxes with which such treasurer is to stand charged. At each October settlement, he shall take from the duplicates previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the assessments on which such delinquent taxes are charged as described on such duplicates, and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes could not be collected. Such last mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor. After deducting the amount of such taxes as returned delinquent and the collection fees allowed the treasurer from the several taxes charged on the duplicates in a just and ratable proportion, the treasurer shall be held liable for the balance of such taxes. After first correcting any error which may have occurred in the apportionment of taxes at any previous settlement, the auditor shall certify the balance due the state, the balance due the county, and the balance due each other taxing district, and forthwith shall record such list of delinquencies in his office.”

Referring again to the 1931 opinion, it will be observed that the writer was therein concerned only with the *advance* payment of taxes before the tax duplicate for the current year was made up by the auditor and transmitted by him to the treasurer for collection; and the conclusion was reached that such advance payment could be received under authority of the provisions of Sections 2567 and 2645, *supra*.

Quite clearly, it was contemplated that any such payment would have been made at a time other than that during which the treasury was "open" for the regular collection of taxes, Section 2649, General Code, as effective at the time the 1931 opinion was written, having then provided:

"The office of the county treasurer shall be kept open for the collection of taxes from the time of delivery of the duplicate to the treasurer until the 25th day of January and from the first day of April until the 20th day of July."

In the instant case, as I understand the proposal of the commissioners, it is expected that payments of *delinquent* taxes, as well as *advance* payments of taxes, will be involved. However, the language of Sections 2567 and 2645, *supra*, is so general in terms and so broad in scope that I conclude without difficulty that it would comprehend cases of delinquent tax payments quite as readily as cases of advance payments; for when these sections are considered in relation to Sections 2649 and 2649-1, *supra*, providing for periodic "closing" of the treasury for the purpose of settlement between the auditor and treasurer, it becomes apparent that the General Assembly has provided the statutory authority whereby tax payments, either advance or delinquent, may be received in unusual and exceptional circumstances.

In the situation with which we are presently concerned, it would appear that the commissioners have expressed their notion that full advantage should be taken of this extraordinary method of tax collection to the end as stated in your inquiry, that "the county treasurer keep his tax books open at all times."

It is, of course, impossible that the treasurer could literally do this for the reason that any taxes collected, in the manner discussed above, would not be credited by the treasurer on "his tax books," i.e., on the tax duplicate transmitted to him by the auditor, but would be received, under authority of Section 2645, General Code, "on the draft of the county auditor," and credited, as required by Section 2568, General Code,

and as pointed out in the 1931 opinion, *supra*, to the "undivided general tax fund" for appropriate distribution according to law at the time of the next semi-annual settlement between the auditor and treasurer.

It would thus appear that to the extent that the statutory fund designated as the "undivided general tax fund" is utilized in this manner it is actually a "suspense fund" or a "suspension fund." In view of the provision for this fund, by the designation indicated above, in Section 2568, *supra*, and because I find no statutory authority whereby the commissioners could "authorize" the auditor to set up a "suspension fund," I conclude that their attempted action in this respect is without legal effect and of no avail. However, I find nothing in the statute which vests any authority in the commissioners to require the auditor and treasurer to utilize, in the regular course of business, the extraordinary method of receiving tax payments above described, rather than in unusual and exceptional circumstances such as those which were considered in the 1931 opinion, *supra*.

As I view the matter, the statute authorizes this extraordinary method of receiving tax payments, and any taxpayer who chooses to utilize such method may do so. If taxpayers generally are encouraged to utilize such method in large numbers and in the regular course of business, it would seem that the business of making the semi-annual settlement between the auditor and the treasurer would become increasingly complex and difficult. However, it would appear that the authority to make a decision in such matter rests ultimately with the county auditor and the county treasurer rather than with the commissioners.

Respectfully,

C. WILLIAM O'NEILL
Attorney General