

are parcels, yet a deed executed by the present owner would be but one deed and should be recorded as such. By analogy the same situation obtains with reference to an assignment of an oil and gas lease covering a number of different tracts of land in which the grantor has an interest.

Your attention is directed to the provisions of Section 2778 of the General Code, which reads:

“For the services hereinafter specified, the recorder shall charge and collect the fees provided in this and the next following section. For recording mortgage, deed of conveyance, power of attorney or other instrument of writing, twelve cents for each hundred words actually written, typewritten or printed on the records and for indexing it, five cents for each grantor and each grantee therein; for certifying copy from the record, twelve cents for each hundred words.

The fees in this section provided shall be paid upon the presentation of the respective instruments for record upon the application for any certified copy of the record.”

Analyzing the provisions of the section last above quoted, it will be disclosed that the same is rather broad, covering mortgages, deeds of conveyance, powers of attorney or “other instrument of writing”. The assignment which you describe is undoubtedly another instrument of writing, within the meaning of Section 2778, supra. It therefore follows that when the same is recorded, a charge of twelve cents for each hundred words actually written, typewritten or printed on the records and five cents for each grantor and each grantee therein should be charged for such recording and indexing.

Sections 8546-4 and 8547 of the General Code, to which you refer, would seem to have no application to the question you present, for the reasons that those sections relate specifically to mortgages, and do not include assignments of leases.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion that where the owner of a number of oil and gas leases assigns his interest therein to another, such instrument is included in the term “other instrument of writing” within the provisions of Section 2778, of the General Code, and the recorder should charge twelve cents for each hundred words actually written for recording and five cents for each grantor and each grantee therein for indexing said instrument.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1669.

COUNTY AUDITOR—UNAUTHORIZED TO DEDUCT FROM ASSESSED VALUATION OF TAX-PAYER'S REALTY THE DECREASE IN VALUATION RESULTING FROM APPROPRIATION OF PART OF SUCH REALTY FOR RAILROAD PURPOSES.

SYLLABUS:

Under the provisions of Section 2591, General Code, the county auditor is not authorized or required to make a deduction from the assessed valuation of real

property of a taxpayer by reason of the decrease in the valuation of such property caused by the appropriation of other contiguous property of such taxpayer for railroad right of way purposes.

COLUMBUS, OHIO, March 25, 1930.

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

“I submit the following inquiry for your opinion:

Mr. C owns land, used for farming purposes, located along the C. & O. Railroad in this county; he has petitioned the county auditor, under Section 2591 of the General Code of Ohio, for a reduction of the duplicate valuation of said farm land per acre, alleging that by reason of the passage of said railroad through his farm land the valuation of each and every acre thereof has been injured.

The county auditor has refused said petitioner his request, upon the ground that Section 2591, G. C., relates to damages caused by floods, tornadoes, fire, etc., and that the words ‘or otherwise’ in said section do not include damages caused by said railroad.

Said auditor bases his opinion upon the following facts: That no land has been destroyed or injured by reason of said railroad, except that which the railroad actually occupies, the same having already been taken from the Tax Duplicate; that the productivity of the land is as good as before the time the railroad passed through the same. Further reason for his refusal is the claim that Mr. C’s right is to petition the Board of Review for reduction in valuation of his land; and still another reason is that Mr. C. received \$80,000.00 damages to the residue of said land at the time said railroad proceeded through his farms; and that this damage more than makes up for the decreased value in the land at this time. Furthermore, that Mr. C. will obtain relief in the reappraisal of said lands in 1931.

The question for your consideration under the foregoing state of facts and conditions is whether or not the county auditor should, after the first Monday in April 1930, pursuant to Section 2591, G. C., proceed to reduce the value of said land as requested of him.”

The question presented in your communication calls for a consideration of the provisions of Section 2591, General Code, therein referred to. This section reads as follows:

“Whenever, after the second Monday of April, and before the first day of October, in any year, it is made to appear to the county auditor, by the oath of the owner, or one of the owners, of a building or structure, land, orchard, timber, ornamental trees or groves, or tangible personal property, or by the affidavit of two disinterested persons, residents of the township, city or village in which the same is or was situated, that such building, structure, land, orchard, timber, ornamental trees or groves, or tangible personal property is listed for taxation for the current year, and has been destroyed or injured by fire, flood, tornado, or otherwise, after the first Monday of April of the current year, he shall investigate the

matter, and deduct from the valuation of the property of the owner of such destroyed property, on the tax list for the current year, an amount which, in his judgment, fairly represents the extent of the injury or destruction; provided, however, that no such deduction shall be made in the case of an injury to, or destruction of a building, structure, land, orchard, timber, ornamental trees or groves, resulting in damage of less than one hundred dollars, nor shall any deduction be made for or on account of any damage or loss which is covered by insurance, nor on account of any sheep killed by dogs. The county auditor shall certify the deductions made by him under the provisions of this section to the county treasurer, who shall correct the tax list and duplicate in accordance therewith."

You do not state in your communication whether the act of the railroad company in taking a part of the taxpayer's land for right of way purposes, and which, it is claimed, resulted in a depreciation of the value of the land here in question, occurred while the county auditor retained possession of the tax duplicate between the second Monday in April and the first day of October. Assuming this to be the fact, it will be noted from the provisions of Section 2591, General Code, above quoted, that the authority and duty of the county auditor to make a deduction in the assessed valuation of the property of the taxpayer is predicated upon the fact that the property of such taxpayer has been destroyed or injured "by fire, flood, tornado, or otherwise". The determination of the meaning of the term "or otherwise", as used in the above quoted language, suggests a consideration of the ejusdem generis rule of statutory construction. This rule, which has like application in the construction of contracts and statutes, is that where "general words are used after specific terms, the general words will be limited in their meaning to things of like kind and nature as those specified." *Lumber Co. vs. Erie R. R., Co.*, 102 O. S., 236. This rule is likewise stated in the case of *Shultz vs. Cambridge*, 38 O. S., 659, as follows:

"General words, following particular and specific words, must, as a general rule, be confined to things of the same kind as those specified."

The application of this rule of construction to the term "or otherwise" immediately following the words "fire, flood, tornado," would result in the conclusion that the county auditor is only authorized to make a deduction in the assessed valuation of the real property of the taxpayer when the same has suffered loss in value by reason of fire, flood, tornado, or some similar casualty. In this connection, however, I note that the Circuit Court of Cuyahoga County in the case of *State ex rel. vs. Wright, Auditor*, 8 C. C. (n. s.) 366, in the construction of an analogous statute (Section 1038a, R. S.), held that the county auditor was authorized and required to make the proper deduction in the assessed valuation of the property of a taxpayer where a taxpayer tore down and destroyed buildings on the property between the second Monday in April and the first day in October.

It will be noted that Section 2591, General Code, contains the provision that no deduction in the valuation of property shall be made "for or on account of any damage or loss which is covered by insurance". This provision read in connection with those of the section as a whole leads to the view that the authority and duty of the county auditor to make a deduction in the assessed valuation of real property is limited to cases where such property has suffered a decrease in valuation by reason of some physical destruction or injury of the property itself, and that the provisions of this section have no application to cases where the value of the

property in question has been depreciated by reason of consequential damages thereto arising from some act or acts extraneous to such property.

The appropriation of a strip of land for railroad right of way purposes out of the farm might cut up the farm in such a way as to make the rest of the land less valuable. This is a matter for pertinent consideration in an action to assess compensation and damages on account of the land so taken. Aside from this, the mere proximity of a railroad in operation might, in some cases, make the land of a taxpayer contiguous thereto less valuable, as would the proximity of manufacturing establishments of some kinds. Many other extraneous reasons might exist why real property in a particular locality might suffer depreciation in value. None of these things would justify an application for deduction under the provisions of the section of the General Code here under consideration.

If the taxpayer referred to in your communication has just cause for complaint as to the assessed valuation of the property here in question, he has an adequate remedy under the provisions of Sections 5609, et seq., General Code, Section 5609, General Code, provides that complaint against any valuation or assessment as the same appears upon the tax duplicate for the current year may be filed with the county board of revision on or before the day limited for the payment of taxes for the first half year, and that any taxpayer may file such complaint as to the valuation or assessments of his own or another's property. Under the provisions of Section 5610, General Code, an appeal may be taken to the Tax Commission of Ohio from the decision of the county board of revision on such complaint. Likewise, under the provisions of Sections 5611-1 and 5611-2, General Code, proceedings in error may be instituted in the Common Pleas Court to the order and finding of the Tax Commission in such matters.

These statutory provisions afford to the taxpayer referred to in your communication full and adequate remedy for any just complaint that he may have with respect to the valuation of the property in question.

By way of specific answer to the question presented in your communication, I am of the opinion that the facts therein stated do not authorize the county auditor to make any deduction in the assessed valuation of the property therein referred to under the provisions of Section 2591, General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1670.

APPROVAL, FINAL RESOLUTION FOR GRADE CROSSING IN LICKING COUNTY—CO-OPERATIVE CONTRACT FOR APPROACH TO BRIDGE IN WILLIAMS COUNTY.

COLUMBUS, OHIO, March 25, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a final resolution relating to the appropriation of additional funds for grade-crossings of Licking County, Section "B", SH No. 359; also co-operative contract with reference to an approach to a bridge on Section "H", SH No. 303, Williams County.