3601

SEWER RENTAL CHARGES, DELINQUENT — WHERE CITY CERTIFIED SAME TO COUNTY AUDITOR FOR COLLECTION, ITEM ERRONEOUSLY INCLUDED, NO AUTHORITY TO STRIKE SUCH ITEM FROM GENERAL TAX LIST AND DUPLICATE — SECTION 3891-1 G.C. — CORRECTIONS OF CLERICAL ERRORS —AFTER ENTRY ON GENERAL TAX LIST AND DUPLICATE FOR COLLECTION — MADE BY COUNTY AUDITOR, SECTION 2589 G.C.

SYLLABUS:

*After delinquent sewer rental charges have been certified by a city to the county auditor for collection under authority of Section* 3891-1, *General Code, there is no authority for the city through its council or any of its other officials to order the county auditor to strike an item thereof from the general tax list and duplicate for the reason that such item has been erroneously included therein. After delinquent sewer rentals have been entered on the general tax list and duplicate for collection, corrections of clerical errors therein may be made by the county auditor as provided in Section* 2589, *General Code.*

Columbus, Ohio, March 24, 1941.

Hon. John B. Hill, Prosecuting Attorney,
Washington C. H., Ohio.

Dear Sir:

This will acknowledge receipt of a request from your predecessor which reads as follows:

> "On June 19, 1937, T. purchased a house and lot in this city. At that time said property had no sewer connections although a new city sewer was in process of construction that would give this property an outlet. On July 1, 1937, a sewer connection was actually made with this property. On September 13, 1937, the city auditor certified as delinquent a sewer rental charge against said property covering the period from July 1, 1936, to July 1, 1937. Apparently this assessment was erroneous.
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> Question: When a sewer rental charge has been assessed

against property and certified by the city auditor to the county treasurer for collection does the city council have authority to cancel said assessment, certify its proceedings accordingly and demand that the county treasurer expunge said assessment from the duplicate, when said city council determines that such assessment was erroneously assessed against said property?"

Council is expressly empowered to establish charges for the use of the city sewers by Section 3891-1, General Code. This section further provides that the rentals made thereunder shall constitute liens on the property and if not paid when due shall be collected in the same manner as other city taxes. So far as applicable, Section 3891-1, General Code, reads as follows:

"The council of any city or village which has installed or is installing sewerage, a system of sewerage, sewage pumping works or sewage treatment, or disposal works for public use, may by ordinance establish just and equitable rates or charges of rents to be paid to such city or village for the use of such sewerage, a system of sewerage, sewage pumping works or sewage treatment or disposal works by every person, firm or corporation whose premises are served by a connection to such sewerage, system of sewerage, sewage pumping works or sewage treatment or disposal works. Such charges shall constitute a lien upon the property served by such connection and if not paid when due shall be collected in the same manner as other city and village taxes. The council may change such rates or charges from time to time as may be deemed advisable. * * * "

In the cities the Director of Public Safety is required by Section 3891-2, General Code, to collect sewer rentals, with authority to appoint necessary officers and agents therefor. If he is unable to make collections and the rentals become delinquent, Section 3891-1, supra, provides that they shall be collected in the same manner as other city taxes. Strictly speaking, sewer rentals or charges are neither taxes nor assessments. This was held in Grim v. Village of Louisville, 54 O. App., 270, wherein the third branch of the syllabus reads:

"An ordinance passed by the council of a municipal corporation providing for such charges is not a levy of a tax, assessment, or special assessment for improvements, but the exercise of a statutory right to collect such rent."

But Section 3891-1, supra, provides that if such rentals or charges are not paid when due, they shall be collected in the same manner as other city taxes. I assume the word "taxes" is there used in a broad sense and actually refers to special assessments which are assessed against specific

parcels of property and not against the tax duplicate generally. It therefore follows that delinquent sewer rentals may be collected in the same manner as special assessments. Provisions for the collection of special assessments are found in Section 3892, General Code, which is in part as follows:

> "When any special assessment is made, has been confirmed by council, and bonds, notes or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the clerk of the council, on or before the second Monday in September, each year, shall certify such assessment to the county auditor, stating the amounts and the time of payment. The county auditor shall place the assesssment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner and at the same time as other taxes are collected, and when collected, pay such assessment together with interest and penalty, if any, to the treasurer of the corporation, to be by him applied to the payment of such bonds, notes or certificates of indebtedness and interest thereon, and for no other purpose. For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes. * * *"

From the foregoing it appears that council has the duty of determining whether sewer rentals should be charged and, if so, of setting the rate. At that point the duties of council appear to end. I am unable to find any authority for the making of any corrections by the council other than its right to change the rates or charges from time to time as it deems advisable. There is no authority for the consideration of individual cases. The rates or charges determined by the council must have uniform application so as to apply with equal force to all persons similarly situated.

In the case your predecessor outlined it is apparent that an error has been made. It is not an error that arose through the erroneous or faulty judgment of any official or board, but is obviously a clerical error. In cities where council has established a schedule of rates or charges of rents for the use of the sewerage system, Section 3891-2, General Code, furnishes authority for the collection of such rentals by the Director of Public Service and he is authorized to appoint the necessary officers and agents for such purpose. Having such express powers, I assume it may be fairly implied that the Director shall keep records thereof, including charges and receipts. When an error, such as your predecessor

has described, is discovered, it seems obvious that he has implied authority to correct the city records. The delinquent rentals, including the erroneous charge, having been certified to the county auditor and by him entered on the general tax list and duplicate, it appears that in the absence of statutory authority to the contrary all corrections of the general tax list and duplicate must be made by the auditor. The authority of the county auditor to correct erroneous assessments resulting from clerical errors after entry on the general tax list and duplicate is found in Section 2589, General Code, which reads in part:

> "After having delivered a duplicate to the county treasurer for collection, if the auditor is satisfied that any tax or assessment thereon or any part thereof has been erroneously charged, he may give the person so charged a certificate to that effect to be presented to the treasurer, who shall deduct the amount from such tax or assessment. * * *"

While the city authorities have no right to compel the correction of county records after certification, it is apparent that they may from the city records furnish the evidence required to satisfy the county auditor that a clerical error has been made and thereby secure for the property owner the auditor's certificate requiring the county treasurer to deduct the erroneous charge from the duplicate.

Answering the question of your predecessor specifically, it is my opinion that after delinquent sewer rental charges have been certified by a city to the county auditor for collection under authority of Section 3891-1, General Code, there is no authority for the city through its council or any of its other officials to order the county auditor to strike an item thereof from the general tax list and duplicate for the reason that such item has been erroneously included therein. After delinquent sewer rentals have been entered on the general tax list and duplicate for collection, corrections of clerical errors therein may be made by the county auditor as provided in Section 2589, General Code.

Respectfully,

THOMAS J. HERBERT,

Attorney General.