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COAL — WHERE OWNER OF LANDS SELLS COAL THEREUNDER AND LATER REACQUIRES INTEREST, COUNTY AUDITOR, AFTER DATE OF SUCH ACQUISITION, IN ASSESSING PROPERTY SHOULD LIST AND VALUE ENTIRE FEE SIMPLE ESTATE AS A UNIT — SECTIONS 5554, 5560, 5563 G.C.

SYLLABUS:

When the owner of the entire fee simple estate to lands sells the coal thereunder and later reacquires such interest, after the date of such acquisition of such interest the county auditor in making his assessment of such property should list and value the entire fee simple estate as a unit. Sections 5554, 5560 and 5563 of the General Code.

Columbus, Ohio, December 31, 1942.

Hon. Leo E. Carter, Prosecuting Attorney,
Caldwell, Ohio.

Dear Sir:

I am in receipt of your request for my opinion reading:

"Where Coal Land and mining rights have been sold from under realty and set up on the tax duplicate as Coal Land for Taxes and afterward repurchased by the original or present surface owner, is there a merger of titles to the original Fee Simple Status to the extent of the Coal Land Value being canceled as such and again added to the value of the realty?"

In the assessment of real property for taxation the county auditor is bound by several statutory rules. In Section 5554 of the General Code it is provided that:

"The county auditor, in all cases, from the best sources of information within his reach, shall determine, as near as practicable, the true value of each separate tract and lot of real property in each and every district, according to the rules prescribed by this chapter for valuing real property. * * *"

Section 5560 of the General Code provides that:

"Each separate parcel of real property shall be valued at its true value in money, excluding the value of the crops, deciduous and evergreen trees, plants and shrubs growing thereon. The price for which such real property would sell at auction, or at forced sale, shall not be taken as the criterion of the true value, and where the fee of the soil of a tract, parcel or lot of land, is in any person natural or artificial, and the right to minerals therein in another, it shall be valued and listed agreeably to such ownership in separate entries, specifying the interests listed, and be taxed to the parties owning different interests, respectively."

It is to be noted that such section only prescribes that the auditor shall separate the listings of the fee to the soil and the rights to the minerals when they are owned by different owners.

Section 5562 of the General Code contains further rules concerning the valuations of mineral lands, but such rules are not pertinent to your inquiry.

Section 5563 of the General Code provides as follows:

"Where the fee of the soil and the minerals, or part of either, of a lot or parcel of land has been previously assessed for taxation in the name of the same person, but the title to the fee of the soil is in one or more persons, and the title to such minerals therein, or any of them, or any right to the minerals therein, or any of them, is in another person, the county auditor shall ascertain the aggregate value of such lot or

parcel of land and the minerals or rights thereto, and shall equitably divide and apportion such aggregate valuation between the owner or owners of the fee of the soil and owner or owners of such minerals and rights thereto so held separately from the fee of the soil, according to the relative value of the interests so held by such owners of the fee of the soil and such minerals or rights thereto, respectively."

You will observe that while Section 5562 of the General Code requires the county auditor to value mineral lands annually, Section 5563 of the General Code requires him to make a unit value of all rights therein and only directs the division and apportionment of such value when the minerals and mineral rights are owned by one person and the fee to the soil is owned by another person.

Inasmuch as a county auditor is a public officer and has such powers only as have been granted him by the general assembly, it would seem that his powers with respect to the assessment of mineral lands are limited by the above quoted sections. There is a well established rule of law that where the general assembly grants a power to a public official and in such grant of power specifies the manner for its performance, such specified method is likewise a limitation on the method of its exercise and it may be performed in no other manner. Frisbee Company v. City of East Cleveland, 98 O.S., 266; Anderson v. P. V. Madsen Investment Company, 72 Fed. (2d), 768.

It would therefore seem that if the owner of the fee to the soil purchased the interest of the coal thereunder prior to the tax listing date of a particular year, the county auditor could only list the property as a whole or unit and would have no power to separate the interests in making such assessment.

Specifically answering your inquiry, it is my opinion that when the owner of the entire fee simple estate to lands sells the coal thereunder and later reacquires such interest, after the date of such acquisition of such interest the county auditor in making his assessment of such property should list and value the entire fee simple estate as a unit. Sections 5554, 5560 and 5563 of the General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General.