September 16, 2005

The Honorable Jeff Adkins
Gallia County Prosecuting Attorney
Gallia County Courthouse
18 Locust Street, Room 1267
Gallipolis, Ohio 45631-1267

SYLLABUS: 2005-034

When a lien of the state for real property taxes has attached under R.C. 323.11 to a parcel of real property sold by judicial sale to which R.C. 323.47 applies, a local rule of court may not require that a prorated portion of the taxes not appearing on the tax duplicate at the time the deed is transferred be paid from the proceeds of the sale.

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September 16, 2005

OPINION NO. 2005-034

The Honorable Jeff Adkins
Gallia County Prosecuting Attorney
Gallia County Courthouse
18 Locust Street, Room 1267
Gallipolis, Ohio 45631-1267

Dear Prosecutor Adkins:

You have requested an opinion whether a local rule of court may require a prorated portion of the real property taxes not appearing on the tax duplicate at the time a deed is transferred be paid from the proceeds of a judicial sale of a parcel of real property to which R.C. 323.47 applies when a lien of the state for the taxes has attached to the parcel pursuant to R.C. 323.11. Based on the following, a local rule of court may not so provide.

You state that, under R.C. 323.47, when a parcel of real property is sold by judicial sale,[1] the proceeds from the sale must be used to pay, *inter alia*, the real property taxes that will appear on the tax duplicate at the time the deed is transferred to the purchaser or the county treasurer's estimate of that amount. Neither R.C. 323.47 nor any other statute, however, requires the

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[1] The term "judicial sale," as used in R.C. 323.47, is not statutorily defined. This term, however, commonly denotes "[a] sale conducted under the authority of a judgment or court order, such as an execution sale." *Black's Law Dictionary* 1338 (7th ed. 1999). *See generally* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). The General Assembly specifies various instances in which judicial sales may be conducted. *See, e.g.*, R.C. 323.25 ("[w]hen taxes charged against an entry on the tax duplicate, or any part of such taxes, are not paid within sixty days after delivery of the delinquent land duplicate to the county treasurer as prescribed by [R.C. 5721.011], the county treasurer shall enforce the lien for such taxes by civil action in the treasurer's official capacity as treasurer, for the sale of such premises, in the court of common pleas of the county in the same way mortgage liens are enforced"); R.C. 2323.07 ("[w]hen a mortgage is foreclosed or a specific lien enforced, a sale of the property shall be ordered"); R.C. 2329.01 ("[l]ands and tenements, including vested legal interests therein, permanent leasehold estates renewable forever, and goods and chattels, not exempt by law, shall be subject to the payment of debts, and liable to be taken on execution and sold as provided in [R.C. 2329.02-.61]").

proceeds from a judicial sale of a parcel of real property to be used to pay any real property taxes that do not appear on the tax duplicate at the time the deed is transferred.

This means that a person who purchases a parcel of real property by way of judicial sale is liable for all real property taxes that do not appear on the current tax duplicate at the time the deed is transferred, but which are a lien on the parcel at the time of the transfer, when the taxes appear on the next succeeding tax duplicate. As further explained in your letter:

> In ordinary real estate transactions between a seller and purchaser, it is custom that real estate taxes be paid (pro-rated) to the date of closing with the seller being responsible up to the date of closing and the purchaser being responsible thereafter.[2] Otherwise, and following [R.C. 323.47], the purchaser would end up eventually paying for real estate taxes which accrue against the property from the last time the tax duplicate was delivered to the county treasurer.
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> The question thus becomes, may the [court of common pleas] not only adhere to [R.C. 323.47] as it relates to judicial sales and the payment of real property taxes which have been placed on the duplicate, but go a step further and require by local rule of court that real property taxes which have accrued against the property but not yet placed on the tax duplicate be pro-rated to the date of sale with the purchaser only being responsible [for] those taxes accruing after the time of his purchase.
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> The mechanics for this would be for the [c]ourt to order the pro-rated portion of the tax to the date of sale be paid to the purchaser who then would pay all the taxes when they are placed on the duplicate and be due and payable. The amount to be pro-rated would be based on the previous year's duplicate. (Footnote added.)

A Court of Common Pleas May Not Adopt a Local Rule of Court When the Rule Affects a Substantive Right or Conflicts with a Statute, or a Rule Promulgated by the Ohio Supreme Court

Before turning to your specific question, it is helpful to review the authority of a court of common pleas to adopt local rules of court. A court of common pleas is empowered under the Ohio Constitution to establish local rules of practice in its court "which are not inconsistent with

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[2] In a sale of a parcel of real property the seller and purchaser may enter into a contract whereby real property taxes that do not appear on the tax duplicate at the time the deed is transferred, but which are a lien on the parcel at the time of the transfer, are apportioned between the seller and purchaser. *See* 1974 Op. Att'y Gen. No. 74-047 at 2-210. *See generally Farkas v. Chicago Title Ins. Co.*, 71 Ohio App. 3d 633, 635, 594 N.E.2d 1140 (Cuyahoga County 1991) ("[a] vendor of real property is responsible for paying tax on the property until the date of conveyance, unless the parties make some other arrangement").

the rules promulgated by the supreme court." Ohio Const. art. IV, § 5(B); *accord* Ohio Sup. R. 5(A); *see Cassidy v. Glossip*, 12 Ohio St. 2d 17, 21, 231 N.E.2d 64 (1967). Local rules of a court of common pleas are limited to procedural matters, and may not affect substantive rights. *In re Estate of Robertson*, 159 Ohio App. 3d 297, 2004-Ohio-6509, 823 N.E.2d 904, at ¶46 (Mahoning County 2004), *appeal not allowed*, 105 Ohio St. 3d 1500, 2005-Ohio-1666, 825 N.E.2d 624 (2005); *Patterson v. Loveless*, C.A. Case No. 18615, 2001 Ohio App. LEXIS 2205, at *6 (Montgomery County May 18, 2001); *Drumm v. Drumm*, C.A. Case No. 16631 and 17115, 1999 Ohio App. LEXIS 1650, at *17-18 (Montgomery County Mar. 26, 1999); *Woloch v. Foster*, 98 Ohio App. 3d 806, 810, 649 N.E.2d 918 (Miami County 1994).

Also, when there is a conflict between a statute and local court rule, the statute prevails over the local rule. *State ex rel. M.A.D.D. v. Gosser*, 20 Ohio St. 3d 30, 33, 485 N.E.2d 706 (1985); *Cassidy v. Glossip*, 12 Ohio St. 2d at 21, 231 N.E.2d 64; *Cleveland Ry. Co. v. Halliday*, 127 Ohio St. 278, 188 N.E. 1 (1933); *In re Estate of Duffy*, 148 Ohio App. 3d 574, 2002-Ohio-3844, 774 N.E.2d 344, at ¶20 (Geauga County 2002); *Lager v. Pittman*, 140 Ohio App. 3d 227, 233, 746 N.E.2d 1199 (Portage County 2000); *Kimble v. Troyan*, 124 Ohio App. 3d 599, 602-03, 707 N.E.2d 1 (Harrison County 1997), *appeal not allowed*, 81 Ohio St. 3d 1497, 691 N.E.2d 1058 (1998); *Fogg v. Friesner*, 55 Ohio App. 3d 139, 140, 562 N.E.2d 937 (Wood County 1988); *State ex rel. Gudzinas v. Constantino*, 43 Ohio App. 3d 52, 53, 539 N.E.2d 173 (Trumbull County 1988); *Krupansky v. Pascual*, 27 Ohio App. 3d 90, 92, 499 N.E.2d 899 (Lorain County 1985); *Grecian Gardens, Inc. v. Bd. of Liquor Control*, 2 Ohio App. 2d 112, 113, 206 N.E.2d 587 (Franklin County 1964); 1965 Op. Att'y Gen. No. 65-48 at 2-92. Accordingly, a court of common pleas may not adopt a local rule of court that requires a prorated portion of the real property taxes not appearing on the tax duplicate at the time a deed is transferred to be paid from the proceeds of a judicial sale of a parcel of real property when a lien of the state for the taxes has attached to the parcel pursuant to R.C. 323.11 if the rule affects a substantive right, or conflicts with a statute, or a rule promulgated by the Ohio Supreme Court.

Payment of Real Property Taxes from the Proceeds of a Judicial Sale that Is Subject to R.C. 323.47

In order to make this determination, we must examine the statutory scheme governing the payment of real property taxes when a parcel of real property is sold by way of judicial sale.[3] R.C. 323.11 declares that the lien of the state for real property taxes levied on the tax list and duplicate for a particular year attaches "to all real property subject to such taxes on the first day of January [of that year], or as provided in [R.C. 5727.06,]" which pertains to taxable property of

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[3] No rule promulgated by the Ohio Supreme Court would conflict with a local rule of a court of common pleas requiring real property taxes not appearing on the tax duplicate at the time a deed is transferred to be paid from the proceeds of a judicial sale of a parcel of real property to which R.C. 323.47 applies when a lien of the state for the taxes has attached to the property pursuant to R.C. 323.11.

a public utility or interexchange telecommunications company. The tax lien of the state continues until the "taxes, including any penalties, interest, or other charges accruing thereon, are paid." R.C. 323.11.

Even though a lien for real property taxes attaches on the first day of January, the exact amount of taxes due and payable is not known until a later date. *See generally City of Cleveland v. Limbach*, 40 Ohio St. 3d 295, 296, 533 N.E.2d 336 (1988) ("[t]axes are not required to be calculated until September in each year (R.C. 319.28), and they are not due until December 31 of that year (R.C. 323.12). Yet, under R.C. 323.11, they become a lien on the property on January 1 in each year"); *Farkas v. Chicago Title Ins. Co.*, 71 Ohio App. 3d 633, 635, 594 N.E.2d 1140 (Cuyahoga County 1991) (same). Each year, on or before the first Monday in August, the county auditor compiles and makes up a general tax list and duplicate of real property in the county, which describes, among other things, "the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names real property has been listed in each township, municipal corporation, special district, or separate school district, or part of either in his county." R.C. 319.28. Based upon statements of the rates and sums to be levied for the year, the county auditor determines the amount of real property taxes to be levied upon each tract and lot of real property, adding taxes of previous years that have been omitted or are delinquent and penalties and interest,[4] and enters that amount upon the general tax list and duplicate. R.C. 319.30. After correcting the list in accordance with the additions and deductions ordered by the Tax Commissioner and county board of revision, the county auditor must certify the tax list, and then, on October first, or on a later date authorized pursuant to statute, deliver the tax duplicate to the county treasurer for collection. R.C. 319.28; R.C. 323.17.

If the tax duplicate is certified to the county treasurer on the first day of October, then each person charged with real property taxes "shall pay to the county treasurer the full amount of such taxes on or before the thirty-first day of December, or shall pay one-half of the current taxes together with the full amount of any delinquent taxes before such date, and the remaining half on

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[4] When the county auditor enters current taxes and delinquent amounts on the general tax list and duplicate of real property under R.C. 319.30, the auditor shall enter against a tract or lot that is on the real property tax suspension list, which sets forth delinquencies that most likely are uncollectible except through foreclosure or through foreclosure and forfeiture, "only the current taxes levied against the tract or lot; he shall not enter on the general tax list and duplicate the delinquent taxes, penalties, and interest charged against the tract or lot." R.C. 319.48(B); *see also* R.C. 319.30(A). Instead, the county auditor indicates on the general tax list and duplicate, with an asterisk or other marking, that the tract or lot appears on the real property tax suspension list, that delinquent taxes, penalties, and interest stand charged against the tract or lot, and that the amount of the delinquency may be obtained through the county auditor or county treasurer. R.C. 319.48(B).

or before the twentieth day of June next ensuing."[5] R.C. 323.12(A). If the time for delivery of the tax duplicate is extended to the first Monday in December, then the times for payment of real property taxes may be extended to January thirty-first and July twentieth.[6] R.C. 323.17. After the tax duplicate is delivered to the county treasurer, the office of the treasurer must be kept open for the collection of real property taxes until June twentieth, "except during such time as it may be necessary to close the office for the purpose of the February settlement of such taxes." R.C. 323.09.

Except as provided in R.C. 323.134, the county treasurer has a duty to prepare and mail real property tax bills "immediately upon receipt of any tax duplicate from the county auditor, but not less than twenty days prior to the last date on which the first one-half taxes may be paid without penalty." R.C. 323.13. When real property taxes are paid by installments, the county treasurer is required to send a second real estate tax bill, at least twenty days prior to the close of the second half tax collection period, showing the amount due and payable at that time. *Id.* Failure to receive a real property tax bill as required by R.C. 323.13 does not, however, "excuse failure or delay to pay any taxes shown on such bill or, except as provided in [R.C. 5715.39(B)(1)], avoid any penalty, interest, or charge for such delay." *Id.*

Under the foregoing statutory scheme governing the payment of real property taxes, the person named as the owner of a parcel of real property on the tax duplicate at the time the tax duplicate is delivered to the county treasurer for collection is liable for the taxes that appear on

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[5] Except as otherwise provided, the terms "[t]axes" and "[c]urrent taxes," as used in R.C. Chapter 323, are defined as follows:

> (C) "Taxes" means the total amount of all charges against an entry appearing on a tax list and the duplicate thereof that was prepared and certified in accordance with [R.C. 319.28], including taxes levied against real estate; taxes on property whose value is certified pursuant to [R.C. 5727.23]; recoupment charges applied pursuant to [R.C. 5713.35]; all assessments; penalties and interest charged pursuant to [R.C. 323.121]; charges added pursuant to [R.C. 319.35]; and all of such charges which remain unpaid from any previous tax year.
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> (D) "Current taxes" means all taxes charged against an entry on the general tax list and duplicate of real and public utility property that have not appeared on such list and duplicate for any prior tax year and any penalty thereon charged by [R.C. 323.121(A)]. Current taxes, whether or not they have been certified delinquent, become delinquent taxes if they remain unpaid after the last day prescribed for payment of the second installment of current taxes without penalty.

R.C. 323.01.

[6] Under R.C. 323.17, the times for paying real property taxes may be extended.

the tax duplicate. *See* R.C. 319.28; R.C. 323.12; R.C. 323.13; 1993 Op. Att'y Gen. No. 93-064 at 2-305 and 2-306. Accordingly, when a parcel of real property is sold by way of a judicial sale to which R.C. 323.47 applies, real property taxes that appear on the tax duplicate at the time the deed is transferred are paid from the proceeds of the sale so as to discharge the seller's liability for such taxes. *See* R.C. 323.47;[7] 1993 Op. Att'y Gen. No. 93-064 (syllabus, paragraph two); *see also* R.C. 323.28(B) (when a parcel of real property is sold at a judicial sale to enforce a lien for taxes charged against an entry on the tax duplicate under R.C. 323.28, the proceeds from the sale are to be used to pay the costs of the sale, "next the amount found due for taxes, then the amount of any taxes accruing after the entry of the finding and before the deed of the property is transferred to the purchaser following the sale ... and any balance shall be distributed according to [R.C. 5721.20]").

As explained in 1993 Op. Att'y Gen. No. 93-064 at 2-306:

> [W]hen there is a sale governed by R.C. 323.47, the court must apply the proceeds of the sale to discharge the taxes, penalties, assessments, and interest that will, at the time at which the deed is transferred, appear on the tax duplicate delivered to the county treasurer, or the county treasurer's estimate of that amount. Amounts appearing on the tax duplicate are, for purposes of R.C. 323.47, a lien on the property that is "due and payable" at that time. If a figure estimated by the county

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[7] R.C. 323.47 provides as follows:

> If land held by tenants in common is sold upon proceedings in partition, or taken by the election of any of the parties to such proceedings, or real estate is sold at judicial sale, or by administrators, executors, guardians, or trustees, the court shall order that the taxes, penalties, and assessments then due and payable, and interest thereon, that are or will be a lien on such land or real estate at the time the deed is transferred following the sale, be discharged out of the proceeds of such sale or election. For purposes of determining such amount, the county treasurer may estimate the amount of taxes, assessments, interest, and penalties that will be payable at the time the deed of the property is transferred to the purchaser. If the county treasurer's estimate exceeds the amount of taxes, assessments, interest, and penalties actually payable when the deed is transferred to the purchaser, the officer who conducted the sale shall refund to the purchaser the difference between the estimate and the amount actually payable. If the amount of taxes, assessments, interest, and penalties actually payable when the deed is transferred to the purchaser exceeds the county treasurer's estimate, the officer shall certify the amount of the excess to the treasurer, who shall enter that amount on the real and public utility property tax duplicate opposite the property; the amount of the excess shall be payable at the next succeeding date prescribed for payment of taxes in [R.C. 323.12].

> treasurer exceeds the amount actually payable at the time the deed is transferred to the purchaser, the purchaser will receive a refund. If a greater amount is actually payable when the deed is transferred, the amount of the excess will be entered on the tax duplicate and will be payable at the next date prescribed for payment of taxes in R.C. 323.12. (Citations omitted.)

A person who is required to sell a parcel of real property by way of judicial sale to which R.C. 323.47 applies thus is liable for the real property taxes appearing on the tax duplicate at the time the deed is transferred.

A Deed for the Sale of a Parcel of Real Property Transfers the Duty to Pay Real Property Taxes on that Parcel from the Seller to the Purchaser

Pursuant to R.C. 319.20, after the transfer of a deed to a purchaser following a judicial sale of a parcel of real property, the name of the purchaser replaces the name of the seller on the tax duplicate as the person to whom the parcel's real property taxes are to be charged:

> After complying with [R.C. 319.202, R.C. 315.251, and R.C. 319.203], and on application and presentation of title, with the affidavits required by law, or the proper order of a court, bearing the last known address of the grantee, or of any one of the grantees named in the title, and a reference to the volume and page of the recording of the next preceding recorded instrument by or through which the grantor claims title, *the county auditor shall transfer any land or town lot or part thereof, minerals therein, or mineral rights thereto, charged with taxes on the tax list, from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent, or otherwise*. (Emphasis added.)

Accordingly, when a deed is transferred to a purchaser following a judicial sale of a parcel of real property to which R.C. 323.47 applies, the purchaser becomes liable for the real property taxes that will appear on the next succeeding tax duplicate. *See* R.C. 319.20; R.C. 319.28; R.C. 323.12; R.C. 323.13; 1993 Op. Att'y Gen. No. 93-064 at 2-304 and 2-305. *See generally* R.C. 2329.37 ("[t]he deed provided for in [R.C. 2329.36[8]] shall be prima facie evidence of the legality and regularity of the sale. All the estate and interest of the person whose property the officer so professed to sell and convey, whether it existed at the time the property become [sic] liable to satisfy the judgment, or was acquired afterward, shall be vested in the purchaser by such sale"). This includes real property taxes that appeared on the tax duplicate at the time the deed was transferred, but which were not paid from the proceeds of the sale, R.C. 323.47; *see S. Ohio Sav. Bank & Trust Co. v. Bolce*, 165 Ohio St. 201, 208, 135 N.E.2d 382

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[8] R.C. 2329.36 requires an officer who sells a parcel of real property on a writ of execution, "on confirmation of the sale, [to] make to the purchaser a deed." The deed is to be "executed, acknowledged, and recorded as other deeds." R.C. 2329.36.

(1956), and real property taxes not appearing on the tax duplicate at the time the deed was transferred, but which were a lien on the parcel at the time of the transfer, 1993 Op. Att'y Gen. No. 93-064 at 2-305 and 2-306.

As summarized in 1993 Op. Att'y Gen. No. 93-064 at 2-305 and 2-306, except as provided in R.C. 323.47, a person who is required to sell a parcel of real property by way of judicial sale to which R.C. 323.47 applies is liable for the real property taxes appearing on the tax duplicate at the time the deed is transferred, while the purchaser is liable for the taxes not appearing on the tax duplicate, but which are a lien on the parcel at the time of the transfer:

> The question of which taxes should be discharged from proceeds of a judicial sale was considered by the Ohio Supreme Court in *Hoglen v. Cohen*, 30 Ohio St. 436 (1876). In that case, the court concluded that, for purposes of the predecessor provisions of R.C. 323.47 then in effect, taxes charged against real property became due and payable on the date when the tax duplicate was required to be delivered to the county treasurer, and taxes which were so due and payable were subject to discharge from proceeds of a judicial sale.... Courts applied the analysis adopted in *Hoglen v. Cohen* in various subsequent cases.
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> The *Hoglen* analysis, therefore, continues to be valid under existing statutory provisions....
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> Your letter suggests that some counties are not applying R.C. 323.47 in accordance with the construction outlined above. Some counties may, in addition to withholding taxes for the tax year in collection, also withhold taxes for the current year, even if the tax duplicate for that year has not yet been delivered to the county treasurer and will not be so delivered prior to the time at which the deed is transferred. This practice must be rejected on the basis of the analysis presented above. As was stated in *Hoglen v. Cohen*: "Until such levy of taxes is, or can be, made on the duplicate, and legally placed against the land sold at judicial sale, no order can be rightfully made to discharge taxes out of the proceeds of a judicial sale. It must stand on the duplicate as a tax ascertained and charged against the land." 30 Ohio St. at 441[.] (Citations omitted.)

But see also generally Suggs v. McCool, Case No. CA93-05-009, 1994 Ohio App. LEXIS 717 (Preble County Feb. 28, 1994) (holding that, under a foreclosure sale to which R.C. 5721.19 applies, a prorated portion of the real property taxes that do not appear on the tax duplicate, but which are a lien on a parcel of real property at the time of the sale, are to be paid from the proceeds of the sale after the payment of other specified expenses and costs).[9]

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[9] The situation in *Suggs v. McCool*, Case No. CA93-05-009, 1994 Ohio App. LEXIS 717 (Preble County Feb. 28, 1994) may be distinguished from the one considered in 1993 Op. Att'y

Thus, a person who is required to sell a parcel of real property by way of judicial sale to which R.C. 323.47 applies is not liable for real property taxes not appearing on the tax duplicate even though a lien of the state for the taxes has attached to the parcel pursuant to R.C. 323.11. Instead, the purchaser of the parcel becomes liable for such taxes when the taxes appear on the next succeeding tax duplicate. *See generally S. Ohio Sav. Bank & Trust Co. v. Bolce,* 165 Ohio St. at 208, 135 N.E.2d 382 ("[u]nder the taxation scheme of this state, real estate taxes run with the land, attach to the real estate itself, become direct and specific liens thereon, and underlie the owner's interest therein"); *Public Square Tower One v. Cuyahoga County Bd. of Revision,* 34 Ohio App. 3d 49, 52, 516 N.E.2d 1280 (Cuyahoga County 1986) (the real property tax "lien applies to the property; it imposes no personal obligation on any owner of that property").

A Local Rule of Court that Apportions Real Property Taxes Between a Seller and Purchaser Affects a Substantive Right

With the foregoing real property tax scheme in mind, we now consider whether a local rule of court may require a prorated portion of the real property taxes not appearing on the tax duplicate at the time a deed is transferred be paid from the proceeds of a judicial sale of a parcel of real property to which R.C. 323.47 applies when a lien of the state for the taxes has attached to the parcel pursuant to R.C. 323.11. Because apportioning real property taxes between a seller and purchaser affects a substantive right, a local rule of court may not require that a prorated portion of the real property taxes not appearing on the tax duplicate at the time a deed is transferred be paid from the proceeds of a judicial sale of a parcel of real property to which R.C. 323.47 applies when a lien of the state for the taxes has attached to the parcel pursuant to R.C. 323.11.

As explained above, a court of common pleas may not adopt a local rule of court that affects a substantive right. The term "'[s]ubstantive' means that body of law which creates, defines and regulates the rights of the parties. The word substantive refers to common law, statutory and constitutionally recognized rights." *Krause v. State,* 31 Ohio St. 2d 132, 145, 285

Gen. No. 93-064 insofar as a foreclosure sale to which R.C. 5721.19 applies grants the purchaser of a parcel of real property a title that is free and clear of all liens and encumbrances except those described in R.C. 5721.19. R.C. 323.47, on the other hand, does not grant a purchaser of a parcel of real property sold at a judicial sale to which R.C. 323.47 applies a title that is free and clear of all liens and encumbrances. *See* R.C. 323.47 ("[i]f the amount of taxes, assessments, interest, and penalties actually payable when the deed is transferred to the purchaser exceeds the county treasurer's estimate, the officer shall certify the amount of the excess to the treasurer, who shall enter that amount on the real and public utility property tax duplicate opposite the property; *the amount of the excess shall be payable at the next succeeding date prescribed for payment of taxes* in [R.C. 323.12]" (emphasis added)); *S. Ohio Sav. Bank & Trust Co. v. Bolce,* 165 Ohio St. 201, 208, 135 N.E.2d 382 (1956) (real property taxes not paid out of the proceeds of a judicial sale "continue to be a charge against the real estate until paid").

N.E.2d 736 (1972) (citation omitted), *appeal dismissed*, 409 U.S. 1052 (1972), *overruled in part on other grounds by Schenkolewski v. Cleveland Metroparks Sys.*, 67 Ohio St. 2d 31, 426 N.E.2d 784 (1981) (overruled in part by *Haverlack v. Portage Homes, Inc.*, 2 Ohio St. 3d 26, 442 N.E.2d 749 (1982)); *accord State v. Slatter*, 66 Ohio St. 2d 452, 455, 423 N.E.2d 100 (1981); *State ex rel. City of Columbus v. Boyland*, 58 Ohio St. 2d 490, 492, 391 N.E.2d 324 (1979); 1998 Op. Att'y Gen. No. 98-021 at 2-112.

Under the aforementioned statutory scheme governing the payment of real property taxes, when a parcel of real property is sold by way of judicial sale to which R.C. 323.47 applies, the seller is not required to pay from the proceeds of the sale real property taxes not appearing on the tax duplicate even though a lien of the state for the taxes has attached to the parcel pursuant to R.C. 323.11. The General Assembly has instead indicated that the purchaser is responsible for paying such taxes when the taxes appear on the next succeeding tax duplicate.

Also, in certain instances the General Assembly has declared that, after the payment of the taxes, penalties, and assessments due and payable, and interest thereon, any excess proceeds from a judicial sale of a parcel of real property belong to the person who is required to sell the parcel or the person's creditors. *See, e.g.*, R.C. 323.28(B) *and* R.C. 5721.20 (when a parcel of real property is sold at a judicial sale to enforce a lien for taxes charged against an entry on the tax duplicate under R.C. 323.28, any excess proceeds from the sale after the payment of the costs of the sale and the taxes found due or accruing before the transfer of the deed are paid to the person who is required to sell the parcel); R.C. 2329.44 (on a sale made pursuant to R.C. Chapter 2329, if the proceeds satisfy the writ of execution, with interest and costs, the judgment debtor is entitled to the balance). The General Assembly has thus granted a person who is required to sell a parcel of real property by way of a judicial sale to which R.C. 323.47 applies the right not to be assessed real property taxes not appearing on the tax duplicate at the time the deed is transferred. Accordingly, the statutory scheme governing the payment of real property taxes when a parcel of real property is sold by way of judicial sale to which R.C. 323.47 applies creates, defines, and regulates the rights of the seller and purchaser with respect to the payment of real property taxes.

A local rule of court that requires a seller to pay a portion of the real property taxes not appearing on the tax duplicate at the time a deed is transferred from the proceeds of a judicial sale of a parcel of real property to which R.C. 323.47 applies when a lien of the state for the taxes has attached to the parcel pursuant to R.C. 323.11, therefore, determines the substantive rights of the seller and purchaser. *See generally Woloch v. Foster*, 98 Ohio App. 3d at 810, 649 N.E.2d 918 (a court "order that divides the cost of medical expenses between an obligor and an obligee determines substantive rights"); *Payne v. Keller*, 18 Ohio App. 2d 66, 71, 247 N.E.2d 311 (Franklin County 1969) (an amendment to a statute that "may mean money out of the pocket of [a] claimant ... affects a substantive right"). A local rule of court may not affect the substantive rights of a seller and purchaser. Therefore, a local rule of court may not require that a prorated portion of the real property taxes not appearing on the tax duplicate at the time a deed is transferred be paid from the proceeds of a judicial sale of a parcel of real property to which R.C. 323.47 applies when a lien of the state for the taxes has attached to the parcel pursuant to R.C. 323.11.

Conclusion

In light of the aforementioned, it is my opinion, and you are hereby advised that, when a lien of the state for real property taxes has attached under R.C. 323.11 to a parcel of real property sold by judicial sale to which R.C. 323.47 applies, a local rule of court may not require that a prorated portion of the taxes not appearing on the tax duplicate at the time the deed is transferred be paid from the proceeds of the sale.

Respectfully,

JIM PETRO
Attorney General