January 11, 2013

The Honorable Michael T. Gmoser
Butler County Prosecuting Attorney
Government Services Center, 11th Floor
P.O. Box 515
315 High Street
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SYLLABUS: 2013-001

1. A political subdivision that receives forfeited real property pursuant to R.C. 5723.01 must file an application under R.C. 5715.27 to have the property placed on the list of real property exempted from taxation.

2. Upon the date of the certification of a court entry ordering the forfeiture of real property to a political subdivision pursuant to R.C. 5723.01, the right of a former owner to redeem the property is terminated and thereafter the former owner may not redeem the property.

3. A political subdivision that receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.65-.79 is not required to pay taxes and assessments that have accrued and are due as of the time the deed to the property is transferred to the subdivision.

4. A political subdivision that is an "electing subdivision," as defined in R.C. 5722.01, and receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 is not required to pay taxes and assessments that have accrued and are due as of the time the deed to the property is transferred to the subdivision.

5. A political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, and receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 is not required to pay taxes and assessments that have accrued and are due as of the time the property is transferred to the subdivision when the subdivision has complied with R.C. 5722.21 and the taxing authorities consent to releasing their claims for the delinquent taxes and assessments.

6. Except as provided in R.C. 5722.21, when a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure

proceedings under R.C. 323.25 or R.C. 5721.18, the entire amount of the lien for taxes and assessments that have accrued and are due as of the time the property is transferred to the subdivision shall continue as a lien on the property until the past due taxes and assessments are paid or the lien is otherwise discharged according to law.

7. When real property is forfeited pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 to a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, the entire amount of the lien for taxes that have accrued and are due as of the time the property is transferred to the subdivision may be paid by deducting from each distribution made by the county auditor the amount necessary to pay the tax delinquency from any revenues or funds to the credit of the subdivision passing under the auditor's control, or which come into the auditor's possession, unless the subdivision has paid the past due taxes.

8. When a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18, the entire amount of the lien for assessments that have accrued and are due as of the time the property is transferred to the subdivision continues as a lien on the property until the past due assessments are paid or the lien is otherwise discharged according to law.

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OPINION NO. 2013-001

The Honorable Michael T. Gmoser
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Dear Prosecutor Gmoser:

You have requested an opinion about the taxation and redemption of real property forfeited to a political subdivision under R.C. 5723.01.[1] Specifically, you ask:

1. May real property forfeited to a political subdivision pursuant to R.C. 5723.01 be placed on the list of real property exempted from taxation upon forfeiture to the subdivision, or must the subdivision apply to have the property placed on the list?

2. Does a former property owner have a right to redeem real property that is forfeited to a political subdivision pursuant to R.C. 5723.01?

3. Is a political subdivision that receives forfeited real property pursuant to R.C. 5723.01 required to pay taxes and assessments that have accrued and are due as of the time the deed to the property is transferred to the subdivision, and, if so, when is the subdivision required to pay the amount that is due?

I. Forfeiture of Real Property to a Political Subdivision

R.C. 5723.01 authorizes a court to order real property forfeited to a political subdivision in foreclosure proceedings. This statute states that, when real property has been twice offered for sale and not sold for want of a bidder in foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18, the prosecuting attorney shall certify this information to the court conducting the

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[1] You are concerned about the forfeiture of real property to a municipal corporation, township, or county under R.C. 5723.01. For the purpose of this opinion, the phrase "political subdivision" refers to municipal corporations, townships, and counties.

proceedings. R.C. 5723.01(A)(2). After a court receives the notification, "the court shall notify the political subdivision and school district in which the property is located, and any county land reutilization corporation in the county, and offer to forfeit the property to the political subdivision, school district, or corporation, or to an electing subdivision as defined in [R.C. 5722.01], upon a petition from the political subdivision, school district, or corporation." R.C. 5723.01(A)(3). If a political subdivision requests through a petition to receive the property through forfeiture, the forfeiture of the real property "is effective when, by entry, the court orders [the property] forfeited to the political subdivision." *Id*. The court then certifies "a copy of the entry to the county auditor and, after the date of certification, all the right, title, claim, and interest of the former owner is transferred to and vested in the political subdivision." *Id*.

II. Taxation of Real Property Forfeited to a Political Subdivision

Your first question asks whether real property forfeited to a political subdivision pursuant to R.C. 5723.01 may be placed on the list of real property exempted from taxation upon forfeiture to the subdivision,[2] or must the subdivision apply to have the property placed on the list.[3] As explained in your letter, when real property is forfeited to the state pursuant to R.C. 5723.01, the property "is exempt from taxation from the date of forfeiture, and shall be removed from the tax lists and duplicates until sold or redeemed and placed on the list of exempted property maintained pursuant to [R.C. 5713.08]." R.C. 5723.02. This means that real property that is forfeited to the state pursuant to R.C. 5723.01 may be placed on the list of real property exempted from taxation without action on the part of the state.

No provision in Ohio law, however, requires or authorizes real property forfeited to a political subdivision pursuant to R.C. 5723.01 to be placed on the list of real property exempted from taxation upon forfeiture to the subdivision. Rather, the placement of real property forfeited to a political subdivision pursuant to R.C. 5723.01 on the list of real property exempted from taxation is contingent upon the subdivision complying with the statutory procedures for obtaining a tax exemption. Article XII, § 2 of the Ohio Constitution grants the General Assembly the power to enact laws to exempt from taxation "public property used exclusively for any public purpose." The General Assembly has exercised this power and enacted various statutes that exempt public property from taxation. *See, e.g.*, R.C. 5709.07; R.C. 5709.08; R.C. 5709.081; R.C. 5722.11.

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[2] R.C. 5713.08(A) requires a county auditor to "make a list of all real and personal property in the auditor's county that is exempted from taxation." *See* R.C. 5713.07. The list shows the owners' names, the values of the properties exempted, and the grounds on which the exemptions were granted. R.C. 5713.08(A).

[3] In Ohio, "[a]ll real property in this state is subject to taxation, except only such as is expressly exempted therefrom." R.C. 5709.01(A). *See generally* R.C. 5709.01(D) ("[a]ll property mentioned as taxable in [R.C. 5709.01] shall be entered on the general tax list and duplicate of taxable property"). Real property forfeited to a political subdivision pursuant to R.C. 5723.01 thus is subject to taxation unless it has been exempted from taxation.

These statutes are not, however, self-executing. *See Bd. of Educ. of the Columbus City Sch. Dist. v. Wilkins*, 106 Ohio St. 3d 200, 2005-Ohio-4556, 833 N.E.2d 726, at ¶8; *Bd. of Educ. of Canfield Local Sch. Dist. v. Olenick*, 45 Ohio St. 2d 300, 306, 345 N.E.2d 66 (1976); *Frederick v. Grandview Mem'l Park, Inc.*, Case No. 97-P-0046, 1998 Ohio App. LEXIS 2894, at **16-17 (Portage County June 26, 1998); *Northeast Ohio Reg'l Sewer Dist. v. Limbach*, 72 Ohio App. 3d 540, 544, 595 N.E.2d 496 (Cuyahoga County 1991); 1962 Op. Att'y Gen. No. 3167, p. 586, at 590; 1946 Op. Att'y Gen. No. 1411, p. 800, at 802. In other words, while real property of a political subdivision may qualify for a tax exemption, the property is not exempt from taxation until the political subdivision complies with the statutory procedures for requesting and obtaining the exemption. *See Bd. of Educ. of the Columbus City Sch. Dist. v. Wilkins*, 106 Ohio St. 3d 200, at ¶8; *Bd. of Educ. of Canfield Local Sch. Dist. v. Olenick*, 45 Ohio St. 2d at 306; *Frederick v. Grandview Mem'l Park, Inc.*, 1998 Ohio App. LEXIS 2894, at **16-17; *Northeast Ohio Reg'l Sewer Dist. v. Limbach*, 72 Ohio App. 3d at 544; 1962 Op. Att'y Gen. No. 3167, p. 586, at 590; 1946 Op. Att'y Gen. No. 1411, p. 800, at 802-04.

R.C. 5713.08(A) provides that no real property of a political subdivision may be placed on the list of real property exempted from taxation "without the consent of the tax commissioner as is provided for in [R.C. 5715.27]."[4] *See* R.C. 5713.07. This means that real property forfeited to a political subdivision pursuant to R.C. 5723.01 may not be placed on the list of real property exempted from taxation unless the subdivision complies with R.C. 5715.27. *See* 1962 Op. Att'y Gen. No. 3167, p. 586, at 590; 1946 Op. Att'y Gen. No. 1411, p. 800, at 802-04; *see also State ex rel. Methodist Book Concern v. Guckenberger*, 133 Ohio St. 27, 30, 10 N.E.2d 1001 (1937) ("[a]fter July 9, 1923, the effective date of [G.C. 5570-1 (now R.C. 5713.08)], the Tax Commission of Ohio had the exclusive right to place property on the [tax] exempt list").

Pursuant to R.C. 5715.27(A), to qualify real property for tax-exempt status, a political subdivision is required to file an application with the Tax Commissioner or county auditor requesting the property be exempted from taxation.[5] The application for exemption must be filed "prior to the

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[4] A political subdivision may have real property placed on the list of real property exempted from taxation in accordance with R.C. 3735.67 or R.C. 5709.28. *See* R.C. 5713.07; R.C. 5713.08(A). The procedures for exempting real property from taxation set forth in R.C. 3735.67 and R.C. 5709.28 apply when the owner of real property expends moneys to improve the property.

Your question involves having real property placed on the list of real property exempted from taxation when a political subdivision has not expended moneys to improve the property. For this reason, this opinion does not consider whether a political subdivision that receives forfeited real property pursuant to R.C. 5723.01 may have the property placed on the list of real property exempted from taxation in accordance with R.C. 3735.67 or R.C. 5709.28.

[5] When a political subdivision applies to have real property exempted from taxation, the political subdivision generally claims that the real property is entitled to be exempted under R.C. 5709.08. This statute exempts public property used exclusively for a public purpose from taxation. To qualify for the tax exemption set out in R.C. 5705.08, "(1) the property 'must be public property,

thirty-first day of December of the tax year for which exemption is requested or for which the liability of the property to taxation in that year is requested."[6] R.C. 5715.27(F). The Tax Commissioner or county auditor considers the application and determines "whether the property is subject to taxation or exempt therefrom." *Id*. If the Tax Commissioner or county auditor determines that the real property is exempt from taxation, the county auditor corrects the general tax list and duplicate of taxable property and places the property on the list of real property exempted from taxation. *See* R.C. 5713.08(A); R.C. 5715.27(F); 1946 Op. Att'y Gen. No. 1411, p. 800, at 802. *See generally* R.C. 5713.07 (a county auditor has a duty to enter on the list of real property exempted from taxation real property that has been exempted from taxation under R.C. 3735.67 or R.C. 5715.27); *State ex rel. City of Lorain v. Stewart*, 119 Ohio St. 3d 222, 2008-Ohio-4062, 893 N.E.2d 184, at ¶31 ("the county auditor had a duty to enter on [the] tax-exempt property list [created by the auditor under R.C. 5713.08(A)] those properties '*which have been exempted from taxation by either the tax commissioner under* [*R.C. 5715.27*] or *by the housing officer under* [*R.C. 3735.67*].' (Emphasis added.)" (quoting R.C. 5713.07)). Therefore, a political subdivision that receives forfeited real property pursuant to R.C. 5723.01 must file an application under R.C. 5715.27 to have the property placed on the list of real property exempted from taxation.

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(2) it must be used for a public purpose, and (3) the use must be exclusively for a public purpose.'" *City of Parma Heights v. Wilkins*, 105 Ohio St. 3d 463, 2005-Ohio-2818, 828 N.E.2d 998, ¶11, *quoting Columbus City Sch. Dist. Bd. of Educ. v. Zaino*, 90 Ohio St. 3d 496, 497, 739 N.E.2d 783 (2001).

R.C. 5722.11 also provides that real property acquired and held by a political subdivision pursuant to R.C. Chapter 5722 (land reutilization program) "shall be deemed real property used for a public purpose and, notwithstanding [R.C. 5709.08], shall be exempt from taxation until sold." And, R.C. 5722.21(E) states that all eligible delinquent land acquired by a political subdivision under R.C. 5722.21 "is real property held for a public purpose and is exempted from taxation" until the subdivision sells or otherwise disposes of the property. Real property that is forfeited to a political subdivision pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18 may be transferred to the subdivision pursuant to R.C. 5722.03(D)-(F) or R.C. 5722.21(B) and thus eligible to be exempted from taxation under R.C. 5722.11 or R.C. 5722.21(E).

[6] A political subdivision's application requesting that real property forfeited to the subdivision pursuant to R.C. 5723.01 be exempted from taxation must include a certificate executed by the county treasurer certifying that all taxes, interest, and penalties levied and assessed against the property "have been paid in full for all of the tax years preceding the tax year for which the application for exemption is filed, except for such taxes, interest, and penalties that may be remitted under [R.C. 5713.08(C)]." R.C. 5713.08(A)(1). As explained later in this opinion, in most instances, when real property is forfeited to a political subdivision pursuant to R.C. 5723.01, all taxes, interest, and penalties levied and assessed against the property prior to its transfer to the subdivision are deemed paid in full.

III. Right of a Former Owner to Redeem Real Property Forfeited to a Political Subdivision

Your second question asks whether a former property owner has a right to redeem real property that is forfeited to a political subdivision pursuant to R.C. 5723.01. You have explained that, pursuant to R.C. 5723.03, the right of a former owner to redeem real property that is forfeited to the state pursuant to R.C. 5723.01 is not terminated until the state disposes of the property. *See* 1985 Op. Att'y Gen. No. 85-018 (syllabus, paragraph 2). R.C. 5723.03 states that, when real property is forfeited to the state pursuant to R.C. 5723.01, a former owner may, at any time before the state disposes of the property, redeem the property by paying "all the taxes, assessments, penalties, interest, and costs incurred in the foreclosure or foreclosure and forfeiture proceedings under [R.C. 323.25, R.C. 5721.14, R.C. 5721.18, or R.C. 323.65-.79] or in proceedings under [R.C. Chapter 5723] that stand charged against the property at the time of such payment."

No provision in R.C. Chapter 5723 (forfeited lands), however, affords a similar right to a former owner of real property that is ordered forfeited to a political subdivision pursuant to R.C. 5723.01.[7] Instead, the right of a former owner to redeem real property that is forfeited to a political subdivision pursuant to R.C. 5723.01 is limited by R.C. 5723.01(A) and the provisions of law governing foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, and R.C. 5721.18.

R.C. 5723.01(A) provides that a court's power to order real property forfeited to a political subdivision is exercised in conjunction with foreclosure proceedings conducted under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18. *See generally State v. Moaning*, 76 Ohio St. 3d 126, 128, 666 N.E.2d 1115 (1996) ("[i]t is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law"). In foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, and R.C. 5721.18, a court has the authority to order real property transferred to a political subdivision. *See, e.g.*, R.C. 323.25; R.C. 323.28(E); R.C. 323.73(G); R.C. 323.74(C)-(D); R.C. 5721.19(A), (I).

When a court orders real property transferred to a political subdivision in foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18, a former property owner's right, whether conferred by statute or by common law, to redeem the property terminates after the property is transferred to the subdivision. R.C. 323.28(E); R.C. 323.76; R.C. 323.77(B); R.C. 5721.19(I); *see* R.C. 323.78; R.C. 5721.18(A); R.C. 5721.25. Specifically, pursuant to R.C. 323.28(E) and R.C.

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[7] The purpose of R.C. Chapter 5723 is to establish procedures for the state to dispose of real property that has been forfeited to it pursuant to R.C. 5723.01. *See generally* R.C. 5723.01(A)(2) (real property forfeited to the state pursuant to R.C. 5723.01 is "to be disposed of in compliance with [R.C. Chapter 5723]"); R.C. 5723.01(B) ("[e]very parcel against which a judgment of foreclosure and forfeiture is made in accordance with [R.C. 5721.16] is forfeited to the state on the date the court enters a finding under that section. After that date, all the right, title, claim, and interest of the former owner is transferred to the state to be disposed of in compliance with the relevant provisions of [R.C. Chapter 5723]").

5721.19(I), in foreclosure proceedings under R.C. 323.25 and R.C. 5721.18, respectively, the "filing for journalization of a decree of foreclosure ordering" the transfer of real property to a political subdivision terminates "any further statutory or common law right of redemption." S*ee* R.C. 323.78; R.C. 5721.18(A); R.C. 5721.25. Similarly, "any common law or statutory right of redemption shall forever terminate" upon the filing of an order to transfer real property to a political subdivision in foreclosure proceedings under R.C. 323.65-.79. R.C. 323.76; *see* R.C. 5721.25; *see also* R.C. 323.77(B); R.C. 323.78.

This means that a former property owner may not redeem real property after it is transferred to a political subdivision in foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18.[8] Construing the provisions of law governing foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, and R.C. 5721.18 with the forfeiture provision of R.C. 5723.01, as required by R.C. 5723.01(A), it follows that, if real property is forfeited to a political subdivision pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18, a former owner may not redeem the property after it is transferred to the subdivision. *See generally Johnson's Markets, Inc. v. New Carlisle Dep't of Health*, 58 Ohio St. 3d 28, 35, 567 N.E.2d 1018 (1991) ("all statutes which relate to the same general subject matter must be read *in pari materia*…. The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously" (citations omitted)).

R.C. 5723.01(A)(3) also provides that "all right, title, claim, and interest of the former owner" of real property forfeited to a political subdivision pursuant to R.C. 5723.01 "is transferred to and vested in the political subdivision" upon the date of certification of the court entry ordering the forfeiture. Hence, unlike real property that is forfeited to the state, real property that is forfeited to a political subdivision is not required to be disposed of in accordance with the provisions of R.C. Chapter 5723 to pay the amount of the unpaid taxes, assessments, penalties, interest, and costs of sale that stand charged against the property. *See* R.C. 5723.01(A)(2) (when real property is forfeited to the state under R.C. 5723.01, a copy of the court entry ordering the forfeiture "shall be certified to the county auditor and, after the date of the certification, all the right, title, claim, and interest of the

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[8] If the alternative redemption period applies in a foreclosure proceeding conducted under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18, the real property that is the subject of the foreclosure proceeding may not be transferred to a political subdivision under R.C. 5723.01 until the expiration of the alternative redemption period. *See* R.C. 323.78; *see also* R.C. 323.76(C)(2); R.C. 5721.25. *See generally* R.C. 323.65(K) (as used in R.C. 323.65-.79, the phrase "'[a]lternative redemption period,' means in any action to foreclose the state's lien for unpaid delinquent taxes, assessments, charges, penalties, interest, and costs on a parcel of real property pursuant to [R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.81], means forty-five days after an adjudication of foreclosure of the parcel is journalized by a court or county board of revision having jurisdiction over the foreclosure proceedings. Upon the expiration of the alternative redemption period, the right and equity of redemption of any owner or party shall terminate without further order of the court or board of revision").

former owner is transferred to and vested in the state to be disposed of in compliance with [R.C. Chapter 5723]"); R.C. 5723.01(B) ("[e]very parcel against which a judgment of foreclosure and forfeiture is made in accordance with [R.C. 5721.16] is forfeited to the state on the date the court enters a finding under that section. After that date, all the right, title, claim, and interest of the former owner is transferred to the state to be disposed of in compliance with the relevant provisions of [R.C. Chapter 5723]"); R.C. 5723.03 ("[i]f the former owner of real property that has been forfeited, at any time before the state has disposed of such property, pays into the treasury of the county in which the property is situated, all the taxes, assessments, penalties, interest, and costs incurred in the foreclosure or foreclosure and forfeiture proceedings under [R.C. 323.25, R.C. 5721.14, R.C. 5721.18, or R.C. 323.65-.79] or in proceedings under [R.C. Chapter 5723] that stand charged against the property at the time of such payment, the state shall relinquish to such former owner all claim to such property"). *See generally* 1996 Op. Att'y Gen. No. 96-047 (syllabus) ("[t]he state of Ohio is vested with ownership of real property forfeited pursuant to R.C. 5723.01(A) to the extent necessary to dispose of the property to pay the amount of the unpaid taxes, assessments, penalties, interest, and costs of sale that stand charged against the property").

Instead, once real property is forfeited to a political subdivision pursuant to R.C. 5723.01, the subdivision is the owner of the property upon the date of certification of the court entry ordering the forfeiture and any common law or statutory right of redemption is terminated. Accordingly, upon the date of the certification of a court entry ordering the forfeiture of real property to a political subdivision pursuant to R.C. 5723.01, the right of a former owner to redeem the property is terminated and thereafter the former owner may not redeem the property.

IV. Payment of Taxes and Assessments that Have Accrued and Are Owed when Real Property Is Forfeited to a Political Subdivision

Your final question asks whether a political subdivision that receives forfeited real property pursuant to R.C. 5723.01 is required to pay taxes and assessments that have accrued and are due as of the time the deed to the property is transferred to the subdivision, and, if so, when is the subdivision required to pay the amount that is due. The provisions of law governing the payment of taxes and assessments that have accrued and are due as of the time the deed to real property is forfeited to a political subdivision pursuant to R.C. 5723.01 are set forth in the statutes that govern foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, and R.C. 5721.18, as the forfeiture is part of such proceedings. *See* R.C. 5723.01(A).

Under Ohio law, a county may institute foreclosure proceedings against real property for the payment of taxes and assessments under R.C. 323.25, R.C. 323.65-.79, and R.C. 5721.18. First, R.C. 323.25 provides that, when taxes charged against an entry on the tax duplicate are not paid within the prescribed time, the county treasurer may enforce the lien for the taxes by civil action. Next, pursuant to R.C. 5721.18, a prosecuting attorney may institute a foreclosure proceeding in the name of the county treasurer to foreclose the lien of the state in a court or board of revision having jurisdiction. And finally, in lieu of using the judicial foreclosure proceedings and other proceedings and remedies available under R.C. 323.25-.28 or R.C. Chapters 5721, 5722, or 5723, a county board of revision may

in accordance with R.C. 323.65-.79 foreclose the state's lien for real estate taxes upon abandoned land. R.C. 323.66(A).

A. Payment of Taxes and Assessments that Have Accrued and Are Owed when Real Property Is Transferred to a Political Subdivision in Foreclosure Proceedings under R.C. 323.65-.79

When a county institutes foreclosure proceedings under R.C. 323.65-.79, a court may order real property transferred to a political subdivision. R.C. 323.73(G); R.C. 323.74(C)-(D); *see* R.C. 323.66(A). Upon the transfer, "all liens for taxes due at the time the deed of the property is [transferred] to the [political subdivision]," and "liens subordinate to liens for taxes, shall be deemed satisfied and discharged." R.C. 323.73(F); R.C. 323.74(F). This means that all liens for taxes and assessments that have accrued and are due when a deed to real property is transferred to a political subdivision in foreclosure proceedings under R.C. 323.65-.79 are deemed satisfied and discharged. Accordingly, a political subdivision that receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.65-.79 is not required to pay taxes and assessments that have accrued and are due as of the time the deed to the property is transferred to the subdivision.

B. Payment of Taxes and Assessments that Have Accrued and Are Owed when Real Property Is Transferred in Foreclosure Proceedings under R.C. 323.25 or R.C. 5721.18 to a Political Subdivision that Is an "Electing Subdivision"

We turn now to the payment of taxes and assessments that have accrued and are due as of the time the deed to real property is transferred to a political subdivision in foreclosure proceedings under R.C. 323.25 or R.C. 5721.18. In such proceedings, a court may order real property transferred to a political subdivision that is an "electing subdivision," as defined in R.C. 5722.01. R.C. 323.28(E); R.C. 5721.19(I). A political subdivision is an "electing subdivision," as defined in R.C. 5722.01, when it has implemented a land reutilization program to facilitate the effective reutilization of nonproductive land situated within its boundaries in accordance with R.C. 5722.02-.15. *See* R.C. 5722.01(D); R.C. 5722.02(A). When a political subdivision is an "electing subdivision," as defined in R.C. 5722.01, "*the foreclosure*, sale, management, and disposition of all nonproductive land situated within the electing subdivision's boundaries [are] *governed by the procedures set forth in* [*R.C. 5722.02-.15*]." R.C. 5722.02(C) (emphasis added).

Pursuant to R.C. 5722.03(F), upon the filing of the deed to transfer real property to a political subdivision that is an "electing subdivision," as defined in R.C. 5722.01, "title to the [property] is incontestable in the electing subdivision and free and clear of all liens and encumbrances, except those easements and covenants of record running with the [property] and created prior to the time at which the taxes or assessments, for the nonpayment of which the [property] is … transferred at foreclosure, became due and payable." S*ee* R.C. 5722.15(A) ("[w]hen an electing subdivision purchases nonproductive land under [R.C. 5722.03 or R.C. 5722.04], the county auditor shall remove from the auditor's tax lists and duplicates all taxes, assessments, charges, penalties, and interest that are due and payable on the land at the time of the sale in the same manner as if the property had been sold to any

other buyer at the foreclosure or forfeiture sale"). Thus, a political subdivision that is an "electing subdivision," as defined in R.C. 5722.01, and receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 is not required to pay taxes and assessments that have accrued and are due as of the time the deed to the property is transferred to the subdivision.

C. Payment of Taxes and Assessments that Have Accrued and Are Owed when Real Property Is Transferred in Foreclosure Proceedings under R.C. 323.25 or R.C. 5721.18 to a Political Subdivision that Is Not an "Electing Subdivision"

A court in foreclosure proceedings under R.C. 323.25 and R.C. 5721.18 is not limited to transferring real property to a political subdivision that is an "electing subdivision," as defined in R.C. 5722.01. As explained previously, in such proceedings a court may pursuant to R.C. 5723.01 order real property forfeited, and the title to the property transferred, to a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01.

A political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, and receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 may not be required to pay taxes and assessments that have accrued and are due as of the time the deed to the property is transferred to the subdivision when the subdivision has complied with R.C. 5722.21.[9] R.C. 5722.21(B) states that the governing body of a political subdivision may declare by ordinance or resolution that it is in the public interest for the subdivision to acquire tax-delinquent real property within the subdivision for the public purpose of redeveloping the property or otherwise rendering it suitable for productive, tax-paying use.

When such an ordinance or resolution is in effect, a political subdivision "may purchase or *otherwise acquire title to eligible delinquent land*, other than by appropriation, and the title shall pass free and clear of the lien for delinquent taxes as provided in [R.C. 5722.21(D)]." R.C. 5722.21(B) (emphasis added). As used in R.C. 5722.21, "delinquent taxes" are "the cumulative amount of *unpaid taxes, assessments*, recoupment charges, penalties, and interest charged against eligible delinquent land that became delinquent before transfer of title to a county, municipal corporation, township, or county land reutilization corporation under [R.C. 5722.21]." R.C. 5722.21(A)(2) (emphasis added). Thus, when real property is forfeited pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 to a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, but which has adopted an ordinance or resolution under R.C. 5722.21(B), the title to the property shall pass free and clear of the lien for taxes and assessments as provided in R.C. 5722.21(D).

R.C. 5722.21(D) states that the lien for taxes and assessments that have accrued and are due as of the time the property is transferred to a political subdivision "for which all of the taxing authorities

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[9] The authority granted to a political subdivision under R.C. 5722.21 "is supplemental to the authority granted under [R.C. 5722.01-.15]." R.C. 5722.21(B).

have consented to release their claims under [R.C. 5722.21] is hereby extinguished, and the transfer of title to such [property] to" the subdivision "shall be transferred free and clear of the lien for such taxes and [assessments]."[10] R.C. 5722.21(D) provides further that, if a taxing authority does not consent to the release of its claim on taxes and assessments that have accrued and are due as of the time the property is transferred to a political subdivision, the entire amount of the lien for such taxes and assessments shall continue as otherwise provided by law until paid or otherwise discharged according to law. Thus, a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, and receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 is not required to pay taxes and assessments that have accrued and are due as of the time the property is transferred to the subdivision when the subdivision has complied with R.C. 5722.21 and the taxing authorities consent to releasing their claims for the delinquent taxes and assessments.

However, if a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, does not take action under R.C. 5722.21 or the taxing authorities do not consent to releasing their claims for the delinquent taxes and assessments, no statute relieves the subdivision from having to pay the entire amount of the lien for the taxes and assessments that have accrued and are due as of the time real property is transferred to the subdivision under R.C. 5723.01. Absent such authority, the entire amount of the lien for the taxes and assessments that have accrued and are due as of the time the property is transferred to the subdivision shall continue as otherwise provided by law until paid or otherwise discharged according to law. *See* R.C. 5709.01(A); R.C. 5722.21(D). *See generally Christian Benevolent Assoc. of Greater Cincinnati, Inc. v. Limbach*, 69 Ohio St. 3d 296, 299, 631 N.E.2d 1034 (1994) ("[s]tatutes granting tax exemptions must be strictly applied"). Therefore, except as provided in R.C. 5722.21, when a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18, the entire amount of the lien for taxes and assessments that have accrued and are due as of the time the property is transferred to the subdivision shall continue as a lien on the property until the past due taxes and assessments are paid or the lien is otherwise discharged according to law.

D. Collection of Taxes and Assessments that Have Accrued and Are Owed when Real Property Is Transferred to a Political Subdivision

As demonstrated above, there are instances in which a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, may be required to pay the entire amount of the lien for taxes and assessments that have accrued and are due as of the time the property is transferred to the subdivision pursuant to R.C. 5723.01. Provisions pertaining to the payment of delinquent taxes on real property owned by a political subdivision are set forth in R.C. 5713.081. This statute declares:

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[10] R.C. 5722.21(C) sets forth provisions governing a taxing authority consenting to releasing its claim on delinquent taxes and assessments attached to real property at the time the property is transferred to a political subdivision.

> All taxes, penalties, and interest that have been delinquent for more than three years, appearing on the general tax list and duplicate of real property which have been levied and assessed against parcels of real property owned by … any political subdivision[11] … shall be collected by the county auditor of the county where the real property is located. *The auditor shall deduct from each distribution made by the auditor the amount necessary to pay the tax delinquency from any revenues or funds to the credit of the … political subdivision … passing under the auditor's control, or which come into the auditor's possession, and such deductions shall be made on a continuing basis until all delinquent taxes, penalties, and interest noted in this section have been paid*. (Footnote and emphasis added.)

R.C. 5713.081(B).

This means that, when real property is forfeited pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 to a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, the entire amount of the lien for taxes that have accrued and are due as of the time the property is transferred to the subdivision may be paid by deducting from each distribution made by the county auditor the amount necessary to pay the tax delinquency from any revenues or funds to the credit of the subdivision passing under the auditor's control, or which come into the auditor's possession, unless the subdivision has paid the past due taxes.

With regard to past due assessments, no statute mandates when a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, is required to pay the entire amount of the lien for assessments that have accrued and are due as of the time real property is transferred to the subdivision under R.C. 5723.01. Instead, as explained earlier, the entire amount of the lien for assessments that have accrued and are due as of the time real property is transferred to a political subdivision continues as a lien on the property until the past due assessments are paid or the lien is otherwise discharged according to law. Hence, when a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18, the entire amount of the lien for assessments that have accrued and are due as of the time the property is transferred to the subdivision continues as a lien on the property until the past due assessments are paid or the lien is otherwise discharged according to law.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

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[11] Counties, municipal corporations, and townships are included within the term "political subdivision," as used in R.C. 5713.081. R.C. 5713.081(C).

1. A political subdivision that receives forfeited real property pursuant to R.C. 5723.01 must file an application under R.C. 5715.27 to have the property placed on the list of real property exempted from taxation.

2. Upon the date of the certification of a court entry ordering the forfeiture of real property to a political subdivision pursuant to R.C. 5723.01, the right of a former owner to redeem the property is terminated and thereafter the former owner may not redeem the property.

3. A political subdivision that receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.65-.79 is not required to pay taxes and assessments that have accrued and are due as of the time the deed to the property is transferred to the subdivision.

4. A political subdivision that is an "electing subdivision," as defined in R.C. 5722.01, and receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 is not required to pay taxes and assessments that have accrued and are due as of the time the deed to the property is transferred to the subdivision.

5. A political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, and receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 is not required to pay taxes and assessments that have accrued and are due as of the time the property is transferred to the subdivision when the subdivision has complied with R.C. 5722.21 and the taxing authorities consent to releasing their claims for the delinquent taxes and assessments.

6. Except as provided in R.C. 5722.21, when a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18, the entire amount of the lien for taxes and assessments that have accrued and are due as of the time the property is transferred to the subdivision shall continue as a lien on the property until the past due taxes and assessments are paid or the lien is otherwise discharged according to law.

7. When real property is forfeited pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18 to a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, the entire amount of the lien for taxes that have accrued and are due as of the time the property is transferred to the subdivision may be paid by deducting from each distribution made by the county auditor the amount necessary to pay the tax delinquency from any revenues or funds to the credit of the

subdivision passing under the auditor's control, or which come into the auditor's possession, unless the subdivision has paid the past due taxes.

8. When a political subdivision that is not an "electing subdivision," as defined in R.C. 5722.01, receives forfeited real property pursuant to R.C. 5723.01 as a consequence of foreclosure proceedings under R.C. 323.25 or R.C. 5721.18, the entire amount of the lien for assessments that have accrued and are due as of the time the property is transferred to the subdivision continues as a lien on the property until the past due assessments are paid or the lien is otherwise discharged according to law.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General