

to pursue a major in his graduate work which will necessitate his being absent from the training school at Hilliards during one quarter of the college year other than the summer quarter. As the high school will be in session it is necessary that a substitute teacher shall be provided. The funds in our own budget will not permit the employment of a substitute teacher from the university funds as is common in the usual arrangements for leaves of absence among the university teachers.

The question that is raised is this: Will it be legal for the Hilliards Board of Education, if they should so desire, to hire and pay a substitute for the training teacher in their high school during his absence for a portion of the year?"

From the statement of facts it appears that the teacher about whom inquiry is made teaches the course in vocational agriculture in the respective high school to which he is assigned. It is assumed that such course constitutes a part of the regular high school curriculum, and it must follow, therefore, that the board of education, if it saw fit, could, in the absence of the arrangement now made with your institution, legally employ full time teachers to teach such courses. Under the present arrangement it appears such board of education is obtaining such teaching without paying a salary for the same.

It would seem, therefore, that there is nothing to prevent a board of education from employing a teacher under the circumstances which you describe. In other words, an employment such as you mention would in effect be no different than the employment of a teacher to fill any other vacancy that might occur during the school year.

It is my opinion, therefore, that where a teacher is furnished to a board of education to teach vocational agriculture, which is a part of the high school course, by the Ohio State University, free of charge, under an arrangement whereby certain advantages are given to the university by reason of favorable conditions and equipment being furnished by the board for the conducting of practice teaching for university students, and such a teacher is discontinued by the said university for a part of the school year, under such circumstances the board of education may legally employ and pay a teacher to teach such course.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

380.

LIEN—SPECIAL ASSESSMENTS—NOT CANCELED AS TO PAYMENT  
DUE AFTER SALE OF REALTY IN FORECLOSURE SUITS.

**SYLLABUS:**

*The lien for special assessments for such improvements as ditches, roads and streets is not canceled as to payment falling due after sale of real estate in delinquent tax foreclosure suits.*

COLUMBUS, OHIO, May 7, 1929.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads:

"I wish to have your opinion in the following: Is the lien for special assessments for such improvements as ditches, roads, streets, etc., canceled as to

payment falling due after sale of real estate in delinquent tax foreclosure suits?"

Section 5718, General Code, reads as follows:

"It shall be the duty of the county auditor to file with the auditor of state a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years, and a certified copy thereof shall at the same time be delivered to the county treasurer, and it shall be the duty of the auditor of state to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax certificate, within three months from the date of filing of such certificate with the auditor of state, by the county auditor; it shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his petition that the certificate has been duly filed by the county auditor; that the amount of money appearing to be due and unpaid, thereby is due and unpaid and a lien against the property therein described, and the prayer of the petition shall be, that the court make an order that said property be sold by the sheriff of the county in the manner provided by law for the sale of real estate on execution. And the treasurer need not set forth any other or further special matter relating thereto. The certified copy of said delinquent land tax certificate, filed with the county treasurer, as hereinbefore provided, shall be prima facie evidence on the trial of the action, of the amount and validity of the taxes, assessments, penalties and interest appearing due and unpaid thereon, plus the amount of eighty-five cents due from the defendants for the delinquency of each year, for advertising and issuance of certificates, and of the non-payment thereof, without setting forth in his petition any other or further special matter relating thereto."

Under the provisions of said section it is the duty of the county auditor to file with the auditor of state, a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years.

It is also the duty of the county auditor to deliver a certified copy of said certificate to the county treasurer. Said section<sup>3</sup> then provides that it shall be the duty of the auditor of state to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax *certificate*.

It is then provided that it shall be sufficient to allege in the petition that the *certificate* has been duly filed by the county auditor; that the amount of money appearing to be due and unpaid, thereby is due and unpaid and a lien against the property *therein described*.

It is also provided that the certified copy of said delinquent land tax *certificate*, filed with the county treasurer, shall be prima facie evidence at the trial of the action of the *amount* and validity of the taxes, assessments, penalties and interest appearing due and unpaid *thereon*.

It is clear that the foreclosure suit is based upon the certificate of the delinquent tract of land that is delivered to the county treasurer, when said foreclosure proceedings are authorized by the auditor of state. It is also clear that the lien against the property described in said certificate is based upon the amount of money appearing due and unpaid in said certificate. It is also noted that said certificate is the basis of the prima facie evidence on the trial of the action, of the amount and validity of the taxes, assessments, penalties and interest appearing due and unpaid thereon. The amount of taxes involved in said suit is therefore determined from said delinquent

land tax certificate, and the decree for taxes, assessments and penalties covers only what appears due and unpaid on said certificate.

Section 5719, General Code, reads in part as follows:

“Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty, interest and costs, for the payment of which, the court shall order such premises to be sold without appraisal. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes, assessments, penalties and interest and the balance shall be distributed according to law. \* \* \*”

It is noted that the judgment rendered is for *such* taxes and assessments as are found due and unpaid. It is evident that the taxes and assessments referred to herein are the taxes and assessments specified in the delinquent land tax certificate and that all taxes and assessments not specified in said certificate, but that become due and payable after the issuance of said certificate, are not included in the amount for which said land was sold.

The only authority that the county treasurer has for bringing foreclosure proceedings against delinquent land is the said land tax certificate so issued to him by the county auditor, and the foreclosure proceeding and the sale of the property are for the purpose of paying the taxes and assessments as specified in said delinquent land tax certificate, and the interest and penalties thereon.

It is evident that the taxes which were included in the delinquent land tax certificate alone are abated and not the taxes which accrue between the issuing of said certificate and the date of sale. The taxes accruing subsequent to the issuing of said certificate are still a lien upon the land.

Under date of March 5, 1928, my predecessor in Opinion No. 1814, rendered to the prosecuting attorney at Akron, Ohio, held as stated in the syllabus that:

“In foreclosure proceedings under the provisions of Sections 5718 and 5719, General Code, only the taxes which were included in the delinquent land tax certificate are abated, and the taxes and assessments accruing subsequently to the delivery of said certificate are not abated in said foreclosure proceedings, but remain a lien upon the land, unless the same are paid from the proceeds of the sale.”

Special assessments are usually paid in installments and said several installments are not delinquent until after the time specified for payment.

Section 3892, General Code, pertaining to the collection of special assessments, provides in part that:

“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. Each installment of such assessments, remaining unpaid after becoming due and collectable, shall be delinquent and bear the same penalty as delinquent taxes.”

Under the provisions of Section 5719, General Code, judgment in foreclosure proceedings is rendered for such taxes and assessments or any part thereof, as are found due and unpaid. It seems clear that installments of assessments not yet due, but which become due after the sale of the real estate in foreclosure proceedings are not due and unpaid within the meaning of said statute.

The purchaser at said delinquent tax sale therefore takes the real estate subject to assessments subsequently becoming due and to taxes subsequently accruing.

In the case of *Makley vs. Whitmore, et al.*, 61 O. S. 587, the first three paragraphs of the syllabus read as follows:

"1. Installments of assessments for municipal improvements which are certified to the county auditor and are due and payable within the year next after the last day of September in any year, should be placed upon the duplicate of the county for such year and collected as other taxes; the installments not so due and payable should not be placed upon the annual duplicate until they become so due and payable.

2. Installments which are properly entered upon the annual county duplicate should be collected the same as other taxes, and in case of a judicial sale of real estate, or a sale by administrators, executors, guardians or trustees, made after the last day of September in any year, such installments as stand unsatisfied upon such duplicate should be paid out of the proceeds of such sale, as provided as to other taxes in Section 2854, Revised Statutes.

3. Installments not due and payable within the year next after the last day of September, remain a lien upon the real estate in the hands of the purchaser at such judicial sale, or sales by administrators, executors, guardians or trustees, and such purchaser takes such real estate burdened with the lien of such unmatured assessments, and he has no right to have the same paid out of the proceeds of such sale. Neither has such municipality such right."

It is stated in the court's opinion, page 593, that:

"It will be noticed that the assessments are to be placed upon the county duplicate, and are payable at the office of the county treasurer. The only warrant the county treasurer has for receiving payment of assessments is the county duplicate, and this duplicate has upon it only the collections to be made for the current year. The auditor has no authority to place anything upon the duplicate for the current year unless it is due and payable during that year."

And at page 594 it is stated that:

"The true construction is that the installments of assessments becoming due and payable in any one year are entered by the county auditor upon the county duplicate for that year, and are collected with and in the same manner as state and county taxes, and the subsequent installments as they become due and payable are placed upon the duplicate and collected in like manner.

\* \* \* And installments of assessments which are not due and payable during the current year, and are therefore not upon the treasurer's duplicate for that year, cannot be collected out of the proceeds of real estate sold at judicial sale, because they are not standing unsatisfied upon the annual duplicate. Installments of assessments are to be collected like other taxes; that is, with and in the same manner as state and county taxes, and such taxes cannot be collected out of such proceeds of sale unless they stand unsatisfied upon the annual duplicate. *Ketcham vs. Pitche*, 13 Ohio St., 201."

Specifically answering your question, it is my opinion that the lien for special assessments for such improvements as ditches, roads and streets is not canceled as to payment falling due after sale of real estate in delinquent tax foreclosure suits.

Respectfully,

GILBERT BETTMAN,  
Attorney General.