

examiners are within the classified service and, second, the compensation for such persons must be in accord with the classification and rules of the civil service commission.

It is a rule of law, established and supported by long usage and the pronouncements of the courts, that where statutes or parts of statutes cannot be reconciled, the latest in point of time is of necessity the last expression of legislative will, which would, in the absence of other factors, be controlling. See 37 O. J., p. 400.

The position, therefore, that examiners in the Bureau of Inspection and Supervision of Public Offices are not within the classified civil service in so far as such might be supported by Section 276, General Code, and which, if so viewed, is inconsistent with House Bill 674, *supra*, and that such examiners may be appointed without the laws governing the classified civil service, becomes untenable.

I therefore conclude, and it is my opinion, that examiners in the Bureau of Inspection and Supervision of Public Offices are within the classified civil service of the state of Ohio and must, therefore, be appointed in conformity with the laws governing the classified civil service of the state of Ohio.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1. FORFEITED LAND SALE—COURT COSTS—COUNTY LIABLE IN TAX LIEN FORECLOSURE WHERE NO BIDDERS AND LAND FORFEITED TO STATE—SECTION 5744 G.C.—COSTS PAID FROM COUNTY GENERAL FUND—EXCEPTION, FEES TO COUNTY OFFICIALS—SECTION 2983 G.C.
2. HOW PROCEEDS OF SALE APPLIED—SECTION 5757 G.C.—OWNERS OF LAND—COSTS OF PRIOR FORECLOSURE PROCEEDINGS CANNOT BE DEDUCTED—TREASURER, UPON DEMAND, SHALL PAY ANY EXCESS TO OWNERS.

**SYLLABUS:**

1. *A county is liable for court costs in tax lien foreclosure proceedings where lands are not sold for want of bidders and are thereafter forfeited to the state as provided in section 5744, General Code. These costs may be paid from the county general fund except such portion as constitutes fees charged by county officials which section 2983, General Code, provides shall not be collected from the county by such officers.*

2. *When forfeited lands are sold at forfeited land sales, section 5757, General Code, provides that the proceeds are first to be applied*

*to the payment of taxes, assessments, interest, penalties and costs of the forfeited land sales. The balance is to be retained by the county treasurers for the proper owners of the forfeited lands. Costs of prior foreclosure proceedings cannot be deducted therefrom, but the treasurers are required, upon demand, to pay such excess to the owners.*

COLUMBUS, OHIO, July 19, 1939.

HON. WARD C. CROSS, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“During the past two years, the Treasurer of Ashtabula County has instituted a number of actions for foreclosure of delinquent taxes on real estate in Ashtabula County .

There have been approximately sixty-five cases in which the property foreclosed was not sold for want of bidders. I have just received a statement issued by the Clerk of Courts charging the Commissioners of Ashtabula County with the unpaid Court Costs in these cases which amount to approximately \$4,000.00.

It is my understanding of the statutes that property foreclosed to satisfy delinquent tax liens and not sold for want of bidders, becomes forfeited lands with the title vested in the State of Ohio.

Will you kindly advise me, whether or not in your opinion, the County Commissioners may properly be charged with these costs. If so, can these costs be paid by the County and then be charged against the land of the delinquent tax payer, carried upon the Treasurer’s duplicate and collected as taxes when the property is sold as forfeited land?

If it is your opinion that these costs cannot be paid by the County Commissioners can they be properly charged against the property of the delinquent tax payer, carried upon the Treasurer’s duplicate and collected at the time of the forfeited land sales which are to be instituted under Section 5744, G.C., and following sections. The proceeds realized from the collection of delinquent taxes are, of course, apportioned among the several subdivisions in the County. The County’s share of this amount is relatively small, and it seems to me that it is inequitable to charge the County with all of the costs in these actions.”

Where lands remain unsold for want of bidders at delinquent land tax foreclosure sales, it is provided in section 5744, General Code, that such lands shall be forfeited to the state. After forfeiture, these lands

are to be offered for sale by the county auditors as provided in section 5752, General Code, which reads as follows:

“The auditor in each county, on the second Monday of March shall attend at the court-house, and sell the whole of each tract of land as contained in the list, heretofore provided for, at public auction, to the highest bidder. He shall offer each tract separately, beginning with the first tract contained in the list and continue on through it, until each tract contained therein is sold. The county auditor may adjourn the sale from day to day until he has disposed of or offered for sale each tract of land specified in the notice. This section shall not prevent the auditor from offering a tract of land two or more times at the same sale.”

The minimum price for which forfeited lands may be sold is set forth in section 5755, General Code, which is as follows:

“If a tract or parcel of land does not sell at such public sale for an amount sufficient to pay the taxes, assessments, penalties and interest which stand against it, the commissioners of the county in which it is situated, at their regular annual session in June preceding the next regular sale, if in their opinion it is of less value than the amount of taxes, assessments, penalties, and interest due upon it, may order the auditor of the county to offer it for sale at the next regular sale of forfeited lands, and sell it to the highest and best bidder therefor, irrespective of the amount of taxes, assessments, penalties, and interest due upon it. Such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes, assessments, penalties, and interest which remain after applying the amount thereon for which it was sold.”

Commenting on these sections, one of my predecessors in office held, in Opinion No. 5327, Opinions of the Attorney General for 1936, as is disclosed by the first two branches of the syllabus as follows:

“1. All lands which have been forfeited to the state under the provisions of section 5744, General Code, must be offered for sale pursuant to section 5752, General Code, at which sale lands may not be sold for less than the taxes, assessments, penalties and interest due thereon.

2. If such lands do not sell at such sale for an amount sufficient to pay the taxes, assessments, penalties and interest due thereon, they may then be sold under the provisions of section 5755, General Code.”

It thus appears that lands that were formerly chargeable with the costs in foreclosure actions may be sold at forfeited land sales without any provision for the collection or payment of such costs. Furthermore, when any of such lands sell for more than enough to pay the taxes, assessments, interest, penalties and the costs of the forfeited land sale, the excess shall be held by the treasurer for the owner of the forfeited lands. The provisions therefor are contained in section 5757, General Code, which is as follows:

“If any of such forfeited lands are sold for a greater sum than the amount of such tax, assessment, interest, penalty, and costs of sale, the county auditor shall charge the county treasurer separately in each case, in the name of the supposed owner, with the excess above such amount. The treasurer shall retain such excess in the treasury for the proper owner of the forfeited lands, and upon demand by such owner, within six years from the day of sale, shall pay the excess to him.”

It thus appears that lands are not chargeable with delinquent tax lien foreclosure costs after a forfeiture.

You also inquire whether or not the county commissioners may properly be charged with these costs. Touching on this point, I refer you to an opinion of this office reported in the Opinions of the Attorney General for 1933, page 1372, wherein it was said at page 1373:

“While there is a rule of law that a governmental agency can not be held liable for an obligation unless so provided by statute, yet there is also a rule that when a governmental agency invokes the aid of the courts, it becomes subject to the jurisdiction of the court for all purposes of such action and is subject to whatever judgment may be rendered therein against it. In other words, the governmental agency may not use the courts for the advantages that may accrue therefrom without at the same time accepting the burdens incident to such use.

At common law, a recovery of costs was unknown. Each litigant paid his own costs, that is, the court costs caused by him. *Farrier v. Cairn*, 5 O. S. 45. The legislature in Ohio has authorized the court to grant a judgment to the plaintiff or prevailing party for his costs and the method for the enforcement of such judgment. (See Sections 11614 and 11630, General Code.) I find no statute which would relieve the county treasurer, as a litigant, from the payment of the court costs incurred by him. It is therefore my opinion that the county is liable for the court costs incurred or caused by it in the prosecution of a foreclosure proceeding for the enforcement of a delinquent real estate tax lien.”

By the application of this rule, the costs incurred by the county might properly be charged against the county commissioners and paid out of the county general fund. But such payment would, at least in part, be merely a figurative payment, for upon receipt of the costs from the county treasurer the clerk would immediately return the money to the county treasurer where it would again be included in the general fund. It was county money before payment and would again continue to be county money upon receipt thereof by the clerk. The elimination of nominal and useless payments by the county to its officers was apparently one of the objectives of the legislature in the adopting of section 2983, General Code, which is as follows:

“On the first business day of each month, and at the end of his term of office, each of such officers shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by his office during the preceeding month or part thereof for official services *provided that none of such officers shall collect any fees from the county*; and he shall also at the end of each calendar year, make and file a sworn statement with the county commissioners of all fees, costs, penalties, percentages, allowances and perquisites of whatever kind which have been due in his office, and unpaid for more than one year prior to the date such statement is required to be made.” (Emphasis the writer’s.)

Read alone, this section would indicate that the clerk could not collect any costs from the county if costs are included in the term “any fees”, even though the county might otherwise be liable therefor.

Before adopting the above conclusion, however, it is pertinent to examine the nature of the court costs. Sections 2900 and 2901, General Code, contain a schedule of fees to be charged by the county clerk, section 2900 providing:

“For the services hereinafter specified, when rendered, the clerk shall charge and collect the fees provided in this and the next following section and no more: \*\*\*.”

These fees the clerk is directed to tax as costs in the case. For his duties and services in the foreclosure proceedings, the sheriff is entitled to fees as set forth in the schedule contained in section 2843, General Code, and these fees shall also be taxed as costs by the clerk, the last portion of the section providing:

“When any of the foregoing services are rendered by an officer or employe, whose salary or per diem compensation is paid

by the county, the legal fees provided for such service in this section shall be taxed in the costs in the case and when collected shall be paid into the general fund of the county.”

In the same manner section 1549, General Code, provides that fees for the services of official shorthand reporters are to be taxed and collected as other costs in the case and paid by the clerk into county treasury and credited to the general fund. Such costs as these are all fees of county officers which section 2953, General Code, provides shall not be collected from the county.

But there are other types of costs. Section 1695, General Code, provides that an official daily law journal may be designated, and section 1697, General Code, authorizes the publisher to collect a designated sum not to exceed thirty-five cents for each case filed, and for publishing abstracts of legal advertising, a designated sum not exceeding \$1.00 for each case to be taxed in the costs. Section 3011, General Code, provides that witness fees and mileage are to be taxed in the bill of costs. Appraisers are entitled to compensation for their services, as shown in section 3006, General Code, and in section 2893 provision is made for the taxing of printer's fees as costs. There are numerous other types of fees which may be incurred in foreclosure proceedings and allowed as costs, none of which are due to county officers and consequently not included in the prohibition contained in section 2983, *supra*. These fees taxed as costs should be paid, but as I have pointed out, they cannot be paid from forfeited land sale proceeds. Section 5757, *supra*, permits the sale of forfeited lands for the sum of taxes, assessments, penalties, interests and costs of each sale, in which event there is nothing left which could be applied to the costs of the former foreclosure proceeding. If there should be a surplus at the forfeited land sale, it must be retained by the treasurer for the proper owner of the forfeited land. Since the foreclosure proceeding costs cannot be collected from the proceeds of the forfeited land sale, it follows, as I have pointed out, that the county must bear these costs. But section 2983, *supra*, provides that such portion of the costs as are fees allowed to county officers shall not be collected. The balance of the costs being fees and sums due to persons other than county officials should be paid to the county general fund.

Specifically answering your questions, it is my opinion that the county is liable for costs in tax lien foreclosure proceedings where lands are not sold for want of bidders and are therefore forfeited to the state as provided in section 5744, General Code. Costs in the foreclosure proceedings for items other than fees charged by county officials may be paid from the county general fund. When forfeited lands are sold at forfeited land sales, section 5757, General Code, provides that the proceeds are first to be applied to the payment of taxes, assessments, interest, penal-

ties and costs of the forfeited land sale, and the balances to be retained by the county treasurers for the proper owners of the forfeited lands.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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INDUSTRIAL COMMISSION OF OHIO—STATE INSURANCE FUND—ADMINISTRATOR OF BUREAU OF UNEMPLOYMENT COMPENSATION OBLIGED TO PAY FROM UNEMPLOYMENT COMPENSATION ADMINISTRATIVE FUND TO INDUSTRIAL COMMISSION PREMIUMS COVERING EMPLOYEES OF SAID BUREAU—SECTIONS 1465-60, 1465-64, 1345-2 AND 1345-3, GENERAL CODE—PERIOD, 1939-1940 BIENNIUM—HOUSE BILL 674, GENERAL APPROPRIATION ACT, 93RD GENERAL ASSEMBLY.

*SYLLABUS:*

*Under the law of Ohio, including Sections 1465-60, 1465-64, 1345-2 and 1345-3, giving proper consideration to the General Appropriation Act of the 93rd General Assembly, the administrator of the Bureau of Unemployment Compensation is obligated to pay from the Unemployment Compensation Administrative Fund, to the Industrial Commission, premiums covering employes of such Bureau.*

COLUMBUS, OHIO, July 19, 1939.

HONORABLE HERSCHEL C. ATKINSON, *Administrator, Bureau of Unemployment Compensation, 427 Cleveland Avenue, Columbus, Ohio.*

DEAR SIR: I have your recent request for my opinion, which reads as follows:

“The Industrial Commission of Ohio has made a demand on this Bureau for payment of premium into the State Insurance Fund on our employees.

Section 1465-64 provides the manner in which contributions for Workmen’s Compensation on behalf of State employees are to be paid.

The Industrial Commission contends that the coverage of our employees is a necessary part of our administration as provided by Ohio General Code Section 1345-3 and, therefore, the premiums into the State Insurance Fund should come not as provided by Section 1465-64, but out of our administrative fund.