

Under the rules of the common law there was no personal liability for the payment of real estate taxes but this rule has been changed in Ohio by statute and taxes levied on real estate become the personal debt of the owner of the realty.

It was held in *Creps vs. Baird*, 3 Ohio St., 277, that taxes due upon lands are a personal debt of the one in whose name the lands are listed when the taxes accrue. This conclusion was based upon a construction of the statute then in force, and, while the present statute does not read precisely like the former one, yet it does, by its plain terms, make all personal property which is subject to taxation liable to be seized and sold for taxes. (1)General Code Section 5671. (1)And that section is one which fixes the lien of the state for taxes levied on real estate. The case just cited was followed and approved in *Warner, Admr., vs. York*, 16 Ohio Cir. Ct. R. (N. S.), 369, 31 O. C. D., 543, and the court in this latter case held that taxes upon real estate, accruing after death of the owner, are a personal debt of the heirs. The judgment of the Circuit Court was affirmed, without written opinion, in *York vs. Warner, Admr.*, 75 Ohio St., 595, 80 N. E., 1135."

I am further sustained in said opinion by the holding in the case of *Brown vs. Russell et al.*, 20 Ohio App. Reports, 101, wherein the Court of Appeals of Lucas County held in the first paragraph of the headnotes as follows:

"Taxes levied on real estate become the personal debt of the owner of the realty, but each cotenant is only liable for that portion of the tax chargeable to his undivided interest."

It is also stated in the same opinion at page 104, that:

"It is insisted on behalf of the defendants that no personal liability exists for the payment of either taxes or assessments, and this contention is doubtless true under the rules of the common law. We cannot, however, assent to this view in Ohio by reason of certain statutory provisions."

In accordance with the foregoing authority and specifically answering your question, it is my opinion that in the foreclosure of a lien for taxes by the county treasurer, a personal judgment may be taken against the owner of the delinquent land for such amount of taxes as accrued while he was such owner, and, in case the purchase price at the foreclosure sale is insufficient to pay the said taxes and the costs, execution upon said judgment may be levied upon said owner's other property.

Respectfully,  
EDWARD C. TURNER,  
Attorney General.

**SYLLABUS:**

*A wholesale dealer in cigarettes, located in the State of Indiana, who sells cigarettes direct to retail dealers in Ohio, invoicing them and making collections direct, is not required to secure a wholesale cigarette dealer's license under the provisions of Section 5894 of the General Code.*

COLUMBUS, OHIO, November 9, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent letter, as follows:

“A person operating a wholesale grocery in the State of Indiana sells cigarettes to retail dealers in Ohio.

Question: Is such wholesale grocer required by Ohio law to pay the license fee for wholesaling cigarettes in this state?”

Accompanying your communication is a letter from the Secretary of The Ohio Wholesale Grocers' Association Co., setting forth more in detail the operation of the Indiana wholesaler. It appears that the cigarettes are sold by the Indiana concern to retail dealers in Ohio and the Ohio dealers are invoiced therefor and collections made by the Indiana concern. It does not appear that there is any permanent representative of the Indiana concern in this state, but I assume that there are traveling representatives soliciting business from the Ohio retailers.

Under the facts presented; I am clearly of the opinion that there is no liability for the wholesale cigarette dealer's license under the provisions of Section 5894 of the General Code.

The reasons for this conclusion are fully set forth in an opinion rendered by this department and found in Annual Reports of the Attorney General for 1915, Vol. II, p. 1270. The first branch of the syllabus of that opinion is as follows:

“A corporation located outside the state through its salesmen sells cigarettes to retail dealers in Ohio and ships the same direct. The retail dealers receive no invoices from the corporation, which sends the invoices to an Ohio representative who presents the invoices to the retailers, makes collection and settles with the corporation, deriving a profit from the transactions. Such transactions are in legal effect sales by the corporation direct to the retail dealer and the Ohio representative who makes the collections is not liable for the wholesale cigarette dealer's license under Section 5894 G. C.”

Without quoting from the opinion, it is sufficient to state that the conclusion was premised upon the fact that the state could not impose a tax upon the sale of cigarettes where such sale constituted interstate commerce. Many authorities are cited in this opinion to this effect. These authorities are equally applicable to the case you present, since the transactions under consideration in my prior opinion are indistinguishable in principle from the one you now present.

Again in Opinion No. 2584, dated September 17, 1928, to Hon. Ernest M. Botkin, Prosecuting Attorney, Lima, Ohio, it was held:

“A person, firm or corporation engaged in the wholesale business of trafficking in cigarettes, with a place of business in another state, but no place of business in Ohio, is not liable for the license fee prescribed in Section 5894, General Code, where such person, firm or corporation sells cigarettes at wholesale in the course of interstate commerce to persons, firms or corporations within Ohio.”

For your information, and for your files, I am enclosing a copy of Opinion No. 2584. I am accordingly of the opinion that the wholesale dealer in cigarettes, located in the State of Indiana, who sells cigarettes direct to retail dealers in Ohio, invoicing them and making collections direct, is not required to secure a wholesale cigarette dealer's license under the provisions of Section 5894 of the General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2859.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND JOHN G. WOIDE, CLEVELAND, OHIO, FOR PLUMBING AND ELECTRICAL CONTRACTS FOR HORSE AND COW BARN AND EQUIPMENT, HAWTHORNDEN FARM, CLEVELAND STATE HOSPITAL, CLEVELAND, OHIO, AT AN EXPENDITURE OF \$24,910.00—SURETY BOND EXECUTED BY THE NATIONAL SURETY COMPANY.

COLUMBUS, OHIO, November 9, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, Columbus, Ohio, and John G. Woide, of Cleveland Ohio. This contract covers the construction and completion of Combined General, Plumbing and Electrical Contracts for Horse and Cow Barn and Equipment, Hawthornden Farm, Cleveland State Hospital, Cleveland, Ohio, and calls for an expenditure of Twenty-four thousand nine hundred and ten dollars (\$24,910.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure have been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond, upon which the National Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*