

and not to the date of execution of the original written undertaking entered into under the provisions of any former act or acts.

It is also my opinion that if such property owner or lienholder, if against real estate, enters into a new written undertaking for the payment of the principal amount of the unpaid installments of delinquent taxes, as provided in Amended Substitute Senate Bill No. 87, that it is necessary for his original written undertaking to be surrendered and canceled of record and a new written undertaking entered into as of the date of the commencement of the new agreement. The County Treasurer has no authority to endorse the provisions of a new written undertaking on an old written undertaking previously entered into, under the terms of this Act.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

310.

FORFEITED LAND SALE, PURCHASE AT—DELINQUENT
TAX PENALTY—PURCHASE BY LIEN HOLDER—COSTS
DO NOT FOLLOW LAND—COUNTY TREASURER, COSTS,
GENERAL REVENUE FUNDS.

SYLLABUS:

1. *A person purchasing property at a forfeited land sale cannot take advantage of the provisions of Amended Senate Bill No. 87 and pay the delinquent taxes without paying penalties and interest because a purchaser at a forfeited land sale does not come within the provisions of the Act.*

2. *A lien holder purchasing property at a forfeited land sale cannot take advantage of said Act for the same reason.*

3. *Costs incurred in suits to foreclose delinquent tax liens under Section 5718, General Code, do not follow the lands through to the forfeited land sale for the reason that there is no legislative provision therefor. The county treasurer is the party plaintiff in such a suit and in his official capacity is primarily liable for the costs by him made and although he may obtain a decree of foreclosure and judgment for costs, if he fails to realize on his judgment he must pay the costs by him made from the county general fund.*

COLUMBUS, OHIO, March 22, 1937.

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

GENTLEMEN: I am in receipt of your letter of recent date in which you request the written opinion of this office upon the following statement of facts:

“Sections 5744, et seq., General Code, provide for the disposition of lots and lands forfeited to the state for non-payment of taxes.

Amended Substitute Senate Bill No. 87, effective February 24th, 1937, provides that any person, firm or corporation charged with or legally authorized or required by law to pay real property taxes and assessments which have become delinquent at or prior to the August or September settlement in the year 1936, or any person, firm or corporation holding a lien upon such real property, may at any time prior to December 10th, 1937, elect to pay the principal sum of such delinquent taxes and assessments, anything in the permanent statutes of the state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding.

QUESTION: May a person purchasing property at a forfeited land sale take advantage of the provisions of Amended Substitute Senate Bill No. 87, and pay the delinquent taxes without penalties and interest?

QUESTION: May a lien holder purchasing property at a forfeited land sale take advantage of the provisions of Amended Substitute Senate Bill No. 87, and pay such taxes without penalties and interest?

QUESTION: In the event the prosecuting attorney instituted proceedings in foreclosure, under the provisions of Section 5718, General Code, and failed to secure a bidder at sale, and said property was forfeited and later offered for sale at forfeited sale, should the amount of costs incurred by the prosecuting attorney in the foreclosure proceedings be included in the amount for which the property is to be sold at forfeited sale?”

Costs as such were unknown at common law. *Bell vs. Bates*, 3 Ohio, 380.

Costs are, therefore, entirely dependent upon statute, and may be regulated, changed or entirely taken away at the will of the legislature.

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Bell vs. Bates, supra. There has been no departure from these holdings, as they are fundamental.

The case hereinbefore referred to was cited for the sole and only purpose of showing that the legislature may provide for costs in any given case or cases, and it may remit them.

Amended Substitute Senate Bill No. 87, is altogether too voluminous to quote in this opinion. Suffice it to say, speaking for the present only, it is the last of a series of bills known as The Whittemore Acts, the purpose of which was to relieve taxpayers from some of the rigors of the law relative to delinquent taxes. However, it will be necessary to give a synopsis of Sections 1, 2 and 3 of the Act.

Section 1. "Any person, firm or corporation charged with or legally authorized or required by law to pay real property taxes and assessments which have become delinquent at or prior to the August or September settlement in the year 1936, or any person, firm or corporation holding a lien upon such real property may at any time prior to the tenth day of December in the year 1937 elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to the contrary notwithstanding. Provided, however, that no such person shall be entitled to make such election unless all taxes, assessments and penalties for the year 1936 then due and payable have been paid, or elected to be paid in accordance with the provisions of Section 2653 of the General Code."

Section 2. "If, within the time mentioned in Section one of this act, such person tenders to the county treasurer a sum equal to one hundred per centum of the principal sum of such taxes and assessments, so delinquent, less penalties, interest and other charges, including interest charges under a prior undertaking entered into pursuant to this act, the county treasurer shall accept and receive such amount in full payment of all such taxes, assessments, penalties, interest and other charges. Upon receiving such amount the treasurer shall give to the person making such tender a receipt in full for all taxes, assessments, penalties, interest and other charges for the year 1935 and any year prior thereto, and shall give to the auditor a certificate in such form as may be prescribed by the bureau of inspection and supervision of public offices, which shall operate as a remitter of the difference between the sum so received and the aggregate amounts charged on the tax dupli-

cate or on the delinquent land tax list, or both, and shall be so treated in the next succeeding settlement between the auditor and treasurer.”

Section 3. “Any such person being the owner of such real property may at such times, in lieu of making a tender as authorized by Section 2 of this act, enter into a written undertaking in such form as shall be prescribed by the bureau of inspection and supervision of public offices to pay the full principal amount of such taxes and assessments, so delinquent, less penalties, interest and other charges, (but including interest charges under a prior undertaking entered into pursuant to this act) in ten equal annual installments payable at the time prescribed by law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of such undertaking. The first installment shall be due and payable upon entering into such undertaking and shall be collected by the treasurer, who shall give a certificate therefor to the county auditor. Upon receipt of such certificate the county auditor shall note on the tax list and duplicate, and on the delinquent tax list, in such manner as the bureau may prescribe, the fact that such undertaking has been entered into; and thereafter, so long as such undertaking shall continue to be performed, the lands against which said delinquent taxes or assessments, penalties, interest and other charges are charged, *shall not be entered on the foreclosure list*, and shall not be published as provided in Section 5704 of the General Code, as part of the list of delinquent lands, anything in the permanent statutes of this state to the contrary notwithstanding.” (Italics ours.)

It will be noted that it was the legislative intent when this Act was passed that no other law or laws relative to the payment of real estate taxes should in anywise interfere with the tax payment plan therein provided. It was not the legislative intent accompanying the passage of this Act, that the lands therein referred to should include lands forfeited to the State for non-payment of taxes. I am forced to this conclusion from the language used in the last sentence of Section 3 of the Act, viz:

“* * * Upon receipt of such certificate the county auditor shall note on the tax list and duplicate, and on the delinquent tax list, in such manner as the bureau may prescribe, the fact

that such undertaking has been entered into; and thereafter, so long as such undertaking shall continue to be performed, the lands against which said delinquent taxes or assessments, penalties, interest and other charges are charged, shall not be entered on the foreclosure list, and shall not be published as provided in Section 5704 of the General Code, as part of the list of delinquent lands, anything in the permanent statutes of this state to the contrary notwithstanding.”

These sections are in *pari materia* and the sentence just quoted applies as well to the payment provided for in Sections 1 and 2 of the Act as to the written undertaking provided in Section 3. Hence, I must hold that these provisions of the Act have no reference to forfeited lands. Such holding answers your questions Nos. 1 and 2 in the negative.

The costs therein referred to do not constitute a tax lien against the lands in question, but they do constitute a judgment lien against the land in favor of the treasurer who instituted the foreclosure proceeding and I see no reason why these costs, inasmuch as they constitute a lien on the lands, should not be satisfied out of the proceeds of forfeited sales; provided always that there is statutory authority for so doing and “there’s the rub.”

Section 5744, General Code, provides in effect that every tract of land and town lot offered for sale in foreclosure proceedings and not sold for want of bidders, and every tract of land and town lot omitted from foreclosure proceedings shall be forfeited to the State and all right, title and interest of the former owner or owners shall be considered as transferred to and vested in the State to be disposed of as the General Assembly may direct.

Sections 5750 to 5754, inclusive, General Code, provide the procedure necessary to be followed to bring about such sale.

Section 5755, General Code, provides that if the land does not sell for enough to pay the *taxes, assessments, penalties, and interest* standing against it, the County Commissioners at their regular session in June preceding the next sale, if in their opinion, it is of less value than the amount of taxes, assessments, penalties and interest due upon it, may order it sold at the next forfeited land sale to the highest bidder irrespective of the taxes, assessments, penalties and interest due upon it. It further provides that such sale shall convey the title to the 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. Let it be noted that this section mentions every

possible charge against the land, except costs; hence it must be concluded that the General Assembly omitted costs advisedly.

It is likewise patent that one of the purposes of the section was to carry to the purchaser a title divested of all claims of the State for any arrearages of taxes, assessments, penalties and interest which might remain after applying the amount for which the land was sold. It was within the power of the General Assembly to have tacked the costs made on foreclosures to the taxes, assessments, penalties and interest, inasmuch as the treasurer had a judgment lien therefor, but it did not do so, and I must conclude it did not intend so to do.

It is my opinion that the costs made in foreclosure proceedings do not follow through the forfeited land sale.

The question follows as to how the costs on foreclosures may be recovered by those entitled to them. Each party is primarily liable for his own costs. That is, for the costs made at his instance. 11 O. J., Sec. 72. I assume that the treasurer made all the costs in the foreclosure proceedings. I further assume that he recovered a judgment for them, but he failed to recover on his judgment, consequently I would say that he would have to pay the costs by him made out of the county treasury, and in the absence of legislative direction, from the general fund thereof, and I take it that this view of the law answers your third question.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

311.

TITLE GUARANTY AND TRUST COMPANIES—USE OF TERM “TRUST” IN FIRM NAMES, PERMITTED, WHEN—NOT RESTRICTED AS BANKS.

SYLLABUS:

Title guaranty and trust companies have a right to use the word “trust” in their firm names, whether or not they had already used that word when the Bank Act was passed, as recodified, in 1919.

The restriction of the use of the word “trust”, under Section 710-3, General Code, to banks, as defined in Section 710-2, does not apply to title guaranty and trust companies, since they are specifically excepted. Thus there is a statutory distinction between the requirements for banks and trust companies and those for title guaranty and trust companies; so that while the former companies must qualify with those requirements or forego the use of the word “trust”, and other companies not qualified