

poses" must be taken to refer to a time when the State actually desires to make such improvements on the leased land as will fit it for public use as a park. This being true, it is plain that your department cannot now cancel the lease, upon the basis that the land is required for park purposes, with the view of turning the land over to the Boy Scouts; for such action would not involve the re-taking of the leased land for improvement as a park for the use of the general public. Of course, the very terms of section 469 import that once the tract is improved for use as a park, the whole public will be entitled to its use, to the exclusion of any limited part of the public, whatever may be the organized form of such limited part. It is possible that the legislature would be authorized to limit the use of the land to a given class, such for instance, as all boys under a certain age; but it is very doubtful whether even the legislature would have power to make the further restriction that the land could be used only by boys belonging to a given organization, however liberal might be the rules of the organization in respect to its membership. At all events, it is clear that the executive branch of the government is without authority to open the lands as a park other than to the whole public, under such rules and regulations as may be proper for the protection of the interests of the state and of the public in its use of the park.

We are thus reverted to the question as to the authority of your department under the words "allotment purposes" as used in the lease. The practice in that respect has been that at the various reservoirs or lakes throughout the state originally constituting part of the canal system, plats have been made of the adjacent lands and the lots shown on the plats have been rented for cottage purposes, and for the incidental business purposes connected with the operation of a public park. With this practice in mind, it is believed that the option of cancellation reserved in the present lease is sufficiently broad to permit your department to cancel the lease for the purpose of making an allotment or plat of the leased land with the object of leasing the various lots to various councils of the Boy Scouts organization for a fifteen-year period. Of course, the allotment will have to be followed by the usual appraisalment, and the payment of rental on the basis of six per cent of the appraisalment. It is not to be overlooked that the present lease is for agricultural purposes, and that the use now being made of the land is of a purely private character; whereas if the allotment plan is carried out and leases made to Boy Scouts organizations, a substantial part of the public will be enabled to have an appropriate place for recreation.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

3069.

TAXES AND TAXATION—PROCEEDINGS TO FORECLOSE LIEN FOR TAXES AGAINST LANDS CERTIFIED AS DELINQUENT—PROCEEDINGS SEPARATE AS TO EACH PARCEL OF LAND WHEN BROUGHT UNDER SECTION 5718 G. C.—WHEN PROCEEDINGS UNDER SECTIONS 2670 and 2671 G. C. DIFFERENT PARCELS MAY BE JOINED IN ONE ACTION—DECREES SEPARATE.

*Proceedings to foreclose the lien for taxes against lands certified as delinquent brought under section 5718 of the General Code, must be separate in the case of each parcel certified as delinquent.*

*In proceedings to foreclose the lien of the state for taxes brought under sections 2670 and 2671 of the General Code, different parcels, etc., may be joined in one action; but the decree in such cases must be rendered separately. Such proceedings may be brought in the case of lands forfeited to the state for non-payment of taxes.*

COLUMBUS, OHIO, May 8, 1922.

HON. HARRY BRITTON, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—You recently submitted to this department the following question:

“In Steele’s Subdivision of Branch Hill lots, Miami Township, Clermont County, Ohio, there are 39 lots delinquent for taxes; about half of these lots have been forfeited to the State of Ohio, and the rest were certified in 1918 for delinquency.

Taxes have not been paid on these lots for several years and the Auditor has a party who will buy them if sold at tax sale, and will, of course, thereafter pay the taxes.

The lots that have been certified can be sold under Sections 5718 and 5719.

What I desire to know is, can I bring a suit against the owners of the lots that have been certified and sell the lots for taxes, and in the same suit, but, in a second cause of action, can I bring suit to sell the lots that have been forfeited to the State. In other words, is it possible to bring a suit to sell certified lands and forfeited lands in the same action.

I would like to know further if it is necessary under Sections 5718 and 5719 to bring one action to sell all certified lands in Clermont County, or just to sell certain ones we feel will sell.”

You refer to Sections 5718 and 5719 of the General Code. These sections provide in part as follows:

“Sec. 5718. 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; \* \* \* 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. \* \* \* 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."

"Sec. 5719. 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 appraisalment. 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. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action. \* \* \*

One question which arises is as to whether these sections contemplate or authorize a single action, or require a separate action for "each delinquent tract of land, city or town lot." The answer to this question will really dispose of both of the questions you submit, although it will be necessary to refer to certain other sections dealing with foreclosure of the State's lien for taxes upon forfeited lands before the question is entirely disposed of.

In order to get at the exact meaning of sections 5718 and 5719, other sections *in pari materia* may be examined. Section 5712 of the General Code provides for the making up of what is called a delinquent land tax certificate. This document is made up after the lands which become delinquent in any year are ascertained, and have been advertised as delinquent. This certificate is by the express provisions of section 5712 of the General Code to be a single document containing a list of all the lands so becoming delinquent. The following may be quoted from that section:

"Sec. 5712. \* \* \* Said county auditor or his deputy, shall continue from day to day with the making of said certificate until one complete certificate is made for each and all of the said tracts of land, city or town lots or parts of lots contained in such advertisement, and upon which said taxes and assessments have not been paid. The original of said certificate of all the tracts of land, city or town lots or parts of lots, shall be forwarded to the auditor of state, the duplicate and triplicate thereof to be kept, one in the county treasurer's office and one in the county auditor's office, bound in book form. \* \* \* "

Section 5713 of the General Code provides as follows:

"The state shall have a first and best lien on the premises described in said certification, for the amount of taxes, assessments and penalty, together with interest thereon at the rate of eight per cent. per annum, from the date of delinquency to the date of redemption thereof, and the additional charge of twenty-five cents for the making of said certification, and sixty cents for advertising. If the taxes have not been paid for four consecutive years, the state shall have the right to institute foreclosure proceedings thereon, in the same manner as is now or hereafter may be provided by law, for foreclosure of mortgages on land in this state, and there shall be taxed by the court as costs in the foreclosure proceedings instituted on said certification, the cost of an abstract or certificate of

title to the property described in said certification, if the same be required by the court, to be paid into the general fund of the county treasurer."

Here is the first reference to the foreclosure proceedings dealt with in section 5718 of the General Code. It will be observed that section 5713 refers to them as the "foreclosure proceedings instituted on said certification." If then the certification is a unit and the foreclosure proceedings are to be instituted "on the certification", it would seem that the lien to be foreclosed is one that is established as a unit and might be regarded as analogous to a blanket mortgage covering several parcels of land. This would be a strange result, however, for the practical consequence would be that the taxes on one parcel which might fail to sell could be discharged by the successful sale of one or more other parcels included in the same certification.

Yet this idea runs on through the sections. Section 5716 of the General Code provides as follows:

"Within five days after the second Tuesday of February each year, the county auditor shall deliver to the auditor of state, a list showing the certification so made by him, and the names in which the lands described in the certification stood upon the tax duplicate. Two copies of such list shall be kept posted for a period of two years, for public inspection, in a prominent place in the office of the county auditor."

Then comes section 5718 which has already been quoted. Observe that it requires that the county auditor file with the auditor of state a certificate of each delinquent tract, etc., upon which the taxes, etc., have not been paid for four consecutive years. This certificate is not expressly authorized or required to include all the lands in this situation; that is to say, it would seem that a separate certificate would have to be filed with the auditor of state for each tract, etc. Yet when the section goes on to provide for the foreclosure proceedings, it stipulates that these shall be brought "upon each unredeemed delinquent land tax certificate," and inasmuch as the phrase "delinquent land tax certificate" is given a meaning in section 5712, and that meaning, as heretofore stated, imports a single document on which all delinquent lands are listed, it is again arguable that the foreclosure proceedings under section 5718 shall consist of a single action against all lands originally included in the certificate.

Here again, however, a troublesome question arises. What is meant by the word "unredeemed" modifying the phrase "delinquent land tax certificate"? The implication is that the delinquency as a whole has been redeemed. Yet if the certificate is to include all of the delinquent lands, it is hard to imagine a case in which there might be a redemption of all delinquencies.

The meaning of the word "redeemed" is, however, disclosed by section 5723, which reads as follows:

"It shall be the duty of the county treasurer, upon receipt by him of all moneys due him for delinquent taxes, assessments, penalty and interest on any tract of land, city or town lot, to enter upon the tax duplicate the word 'redeemed,' and it shall be the duty of the county auditor, after each settlement period, to revise the record of certified delinquent lands, city or town lots, by writing the word 'redeemed' (in the margin provided for that purpose) on all such tracts of land, city or town lots entered 'redeemed' upon the treasurer's duplicate."

This shows that the redemption applies only to the tract on which the taxes, etc., are paid. Section 5724 provides further in this connection as follows:

"All delinquent land upon which the taxes, assessments, penalty or interest have become delinquent, may be redeemed at any time before foreclosure proceedings thereon have been instituted, by tendering to the county treasurer the amount then due and unpaid."

With section 5723 this section further discloses the meaning of the word "redeemed".

Now, we have section 5720, which provides as follows:

"No issuance of a delinquent land tax certificate shall be invalid on account of its having been charged on the duplicate in name other than that of the rightful owner, if in other respects it is sufficiently described on the duplicate, and the taxes, assessments, penalty and interest set forth in said certificate were due and unpaid at that time."

This section obviously imports the existence of a separate delinquent land tax certificate for each tract or lot. From these conflicting and somewhat obscure provisions it is difficult to draw any definite conclusion. However, a comparison at this point with sections 2670 and 2671 of the General Code may be helpful. These sections are part of a group authorizing an action by the county treasurer to foreclose the state's general lien for taxes on real estate. They provide as follows:

"Sec. 2670. Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty 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 and assessments, and the balance shall be distributed according to law. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action. When the lands or lots stand charged on the tax duplicate as forfeited to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through and represented by the county treasurer."

"Sec. 2671. In such proceedings the county treasurer may join in one action all or any number of lots or lands, but the decree shall be rendered severally or separately, and any proceedings may be severed in the discretion of the court for the purpose of trial, error or appeal, where an appeal is allowed, and the court shall make such order for the payment of costs as shall be deemed equitable and proper."

Here is express provision for the rendition of a separate or several decree in a case where several lots of lands are authorized to be joined in one action to foreclose. The absence of such a provision in section 5719 is significant. Under section 5719 but a single judgment is to be rendered. The practical difficulties in the way of construing sections 5718 and 5719 as authorizing a joinder of the proceedings to foreclose the lien on distinct parcels of land, though included in the same delinquent tax certificate, are great. Indeed, a constitutional point may be involved. At any rate, in the absence of language like that found in section 5721,

this department is of the opinion that in spite of the language in sections 5712 and 5718, which has been quoted, the true meaning of these sections is that a separate action must be brought against each parcel of land certified as delinquent.

This statement answers both of your questions. The quotation of sections 2670 and 2671 of the General Code shows that it is possible to proceed against all forfeited lands in a single action, but in the opinion of this department, this cannot be done under sections 5718 and 5719 of the General Code.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

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3070.

DISAPPROVAL, DEFICIENCY BONDS OF MECCA TOWNSHIP RURAL  
SCHOOL DISTRICT, TRUMBULL COUNTY, \$5,500.

COLUMBUS, OHIO, May 8, 1922.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

Re: Deficiency bonds of Mecca township rural school district, Trumbull county, \$5,500.

GENTLEMEN:—The above bonds are issued under authority of House Bill No. 254, 109 O. L., 191, which conferred authority upon boards of education to issue bonds to meet deficiencies for the school year ending July 1, 1921.

In Opinion No. 2984, dated April 13, 1922, I advised the Bureau of Inspection and Supervision of Public Offices that a municipality was without authority after January 1, 1922, to issue deficiency bonds under the provisions of House Bill No. 4, 109 O. L., 17, by reason of the fact that said House Bill No. 4 was repealed by the provisions of the Griswold Act, 109 O. L., 336, such repeal taking effect January 1, 1922. House Bill No. 4 and House Bill No. 254 contain practically identical provisions, being different only in that House Bill No. 4 authorizes the funding of deficiencies in municipal corporations for the fiscal year ending December 31, 1921, whereas House Bill No. 254 authorizes the funding of deficiencies in school districts for the year ending July 1, 1921.

For reasons identical with those set forth in said Opinion No. 2984, referred to, I am also of the opinion that the authority conferred by House Bill No. 254, was repealed by the Griswold Act and that boards of education are without authority since January 1, 1922, to issue deficiency bonds under said House Bill No. 254.

Since it appears from the transcript that the resolution of the board of education authorizing the issuance of the bonds under consideration was not adopted until April 11, 1922, it follows that there was no authority in law for the issuance of said bonds at that time and I advise the Industrial Commission not to purchase the same.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*