

the offices of bailiff and deputy bailiffs of the Municipal Court of Akron should continue in office at the rate of pay set forth in section 1579-540, General Code, prior to its amendment, until it becomes possible for the court to comply with the provisions of said section as amended.

In view of the above, I am therefore of the opinion that:

1. The provisions of section 1579-540, General Code (House Bill No. 343, 93rd General Assembly), do not become operative until January 1, 1940, at which time the Municipal Court of Akron will consist of a presiding judge and three other judges.

2. Until the operative date of section 1579-540, General Code (House Bill No. 343, 93rd General Assembly), those persons now serving as bailiff and deputy bailiffs of the Municipal Court of Akron may continue in office at the same rate of pay each was receiving prior to said amendment.

Respectfully,

THOMAS J. HERBERT,

Attorney General.

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DELINQUENT LAND TAX FORECLOSURE — WHERE PREMISES UNSOLD, NO BIDDERS — ORDER, REAPPRAISEMENT AND SALE—TAX LIEN FORECLOSURE, REQUIRES APPRAISEMENT—ENTRY—TAX LIST AND DUPLICATE—TWO OR MORE TRACTS OR LOTS—WHERE TAKEN TOGETHER FORM ONE PARCEL—SECTIONS 5718, 5719 G. C.

SYLLABUS:

1. *An order of reappraisal and sale may be issued in a delinquent land tax foreclosure proceedings where the premises have been appraised as provided in section 5719, General Code, offered for sale but returned unsold for want of bidders.*

2. *There is no authority for the confirmation of a tax lien foreclosure sale without appraisal where the amount of bid is less than the total amount of the taxes and assessments, or any part thereof, found due and unpaid, and the penalties, interest, costs and charges, together with all taxes and assessments payable subsequent to the certification for foreclosure and costs of such action charged against the property in question. If an appraisal has been had, as provided in section 5719, General Code, such lands shall be sold for at least two-thirds of the appraised value thereof and after payment of costs, the treasurer shall receive the balance thereof in full discharge of all taxes, assessments, penalties, interest and charges included in the finding.*

Section 5718, General Code, requires the county auditor to make a separate delinquent land tax certificate for such entry on the tax list and

duplicate which is to be certified for foreclosure or forfeiture. Such entry may contain two or more tracts or lots or parts thereof if, when taken, together, they form only one parcel and have been carried as a single entry on the duplicate.

COLUMBUS, OHIO, June 23, 1939.

HON. HUGO ALEXANDER, *Prosecuting Attorney, Steubenville, Ohio.*

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

“Section 5719 of the General Code provides, that in a foreclosure action instituted by the Prosecuting Attorney, the Court shall make a finding of all taxes, assessments, interest, costs and charges due upon the Delinquent Land Tax Certificate together with all the accruals subsequent thereto, and order the premises sold without appraisal for not less than the total amount of the finding and costs, unless the Prosecuting Attorney shall apply for an appraisal, in which event the premises shall be appraised as provided in Section 11672 of the General Code and shall then be sold for not less than two-thirds of the appraised value thereof.

A question has arisen in connection with a foreclosure action instituted by a lien holder about three or four years ago on a number of lots included in one subdivision. The lots were severally appraised by the Sheriff and a return was thereafter made by the Sheriff that the lots could not be sold for want of bidders.

Question (1) Is it possible for an alias order of sale to be issued providing for reappraisal of the lots, the lots to be sold for two-thirds of the appraised value? If the amount recovered is less than the delinquent taxes due against several lots, can the treasurer accept this amount in full of the delinquent taxes owing, and discharge the entire tax lien against each lot?

Question (2) Is it necessary to secure a delinquent Land Tax Certificate for each lot in a subdivision where there is one owner or may the delinquent Land Tax Certificate recite the several lots in said certificates?”

In answer to the first branch of Question (1) of your inquiry, your attention is directed to Opinion No. 474, Opinions of the Attorney General, 1937, page 754, the syllabus of which reads in part as follows:

“When land has been offered for sale in foreclosure proceedings under virtue of Section 5718-3, et seq., General Code, and is not sold for want of bidders, it does not so instanti pass to the State as forfeited land, but it may be again offered for sale upon an alias order of sale, if there is reasonable ground for be-

lieving that upon reoffer such land will sell for enough to satisfy the lien of the State thereon for unpaid taxes.”

In arriving at this conclusion my predecessor has suggested that a delinquent tax lien foreclosure is an action in rem with the land as the subject matter of the jurisdiction. Being an equitable action, the court is invested with a broad discretion in all matters that will conduce to make the land satisfy the lien for unpaid taxes.

The procedure in tax lien foreclosure actions is outlined in sections 5718-3 and 5719, General Code. These sections should be read and considered in *pari materia*. Section 5719 provides for a sale without appraisal for not less than the total amount of taxes, assessments, penalties, interests, costs and charges, together with all taxes and assessments payable subsequent to certification for foreclosure “unless the prosecuting attorney shall apply for an appraisal, in which event the premises shall be appraised in the manner provided by section 11672 of the General Code, and shall be sold for at least two-thirds of the appraised value thereof.” Section 11672 provides for an appraisal by three disinterested freeholders, residents of the county. That procedure, I assume, was followed in the cases you refer to in your letter. There are no further specific provisions contained in section 5719, but in section 5718-3 it is provided that the proceedings for such foreclosure shall be instituted and prosecuted in the same manner as is now or hereafter may be provided by law for the foreclosure of mortgages on land in this state.

In the prosecution of mortgage foreclosure actions where the lands are not sold upon order of sale for want of bidders, an alias order of sale may be issued (Section 11697, General Code), or the court may on motion of plaintiff set aside such appraisal and order a new appraisal to be made. (Section 11710, General Code). This procedure receives considerable support from the frequent holdings of the courts that tax statutes should receive construction in favor of the land owner and lienholders. In the recent case of *Watson v. Tax Commission*, 135 O. S. 377, in construing tax liens, it was held that:

“A strict construction is required and any doubt must be resolved in favor of the citizen upon whom or the property upon which the burden is sought to be imposed.”

In the case you have presented the lands have been offered for sale at two-thirds the appraised value and the order of sale returned for want of bidders. Since no bidders can be found willing to pay two-thirds of the appraised value, therefore the lands must either be forfeited to the state under section 5744, General Code, or be sold in connection with the foreclosure action under an order of appraisal and sale. The latter method distinctly favors the taxpayers and lienholders in that it en-

courages sales for the greatest possible amount obtainable, which is unquestionably the wish of the Legislature.

The answer to the second branch of Question (1) is found in section 5719, General Code, which so far as pertinent reads as follows:

“A finding shall be entered of the amount of such taxes and assessments, or any part thereof, as are found due and unpaid, and of penalty, interest, costs and damages, for the payment of which, together with all taxes and assessments payable subsequent to certification for foreclosure, the court shall order such premises to be sold without appraisal for not less than the total amount of such finding and costs, unless the prosecuting attorney shall apply for an appraisal, in which event the premises shall be appraised in the manner provided by section 11672 of the General Code, and shall be sold for at least two-thirds of the appraised value thereof.”

In construing this section as it formerly read, the Court of Appeals of the Eighth Appellate District held in the case of *Cook, Treas. v. Pomozi*, 40 O. App. 566, decided June 1, 1931, as follows:

“Court’s statutory power to order premises sold for delinquent taxes without appraisal, absent contrary legislation, includes power to approve sale (Section 5719, General Code).”

As I have suggested above, this decision was based upon the former wording of section 5719, which so far as pertinent, then read:

“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.”

Section 5719, in its present form, was passed June 24, 1931 and became effective October 14, 1931.

In cases wherein the prosecuting attorney has applied for an appraisal, section 5719 definitely provides that the premises shall be sold for at least two-thirds of the appraised value thereof. As has been pointed out in the first part of this opinion, an order of reappraisal and sale may be issued under the circumstances therein set forth, but in such event the sale cannot be confirmed unless the bid is at least two-thirds of the appraisal under which the premises have been ordered sold.

I think the present wording of section 5719 definitely requires the premises to bring a sum at least equal to the total amount of the taxes and assessments, or any part thereof, as found due and unpaid, and the penal-

ties, interest, costs and charges, together with all taxes and assessments payable subsequent to certification for foreclosure, or, if the premises have been appraised, as provided in section 5719, for a sum at least equal to two-thirds of the appraised value thereof. If the bid is for a lesser sum, the court is without authority to confirm the sale.

Coming now to Question (2), it should be noted that the delinquent land list is made up from the entries shown on the tax list and duplicate. The authority for preparing a list and record of delinquent lands is found in section 2601, General Code, which is as follows:

“During the month of August of each year, the auditor shall make and record, in a book provided for that purpose, a list of all lands and town lots returned by the treasurer delinquent at the preceding settlement, describing them as described on the tax duplicate, charging thereon the unpaid taxes for the year next preceding, together with the penalty thereon, and also the taxes of the current year. He shall certify the correctness of such list and the date at which it was recorded, and sign it officially.”

The county auditor is directed to make delinquent tax certificates for each tract of land contained in the delinquent land list, and to describe each tract of land or lot, the same as it is described on the tax list. Section 5718, General Code, providing therefor reads as follows:

“At the expiration of three years after certification, the county auditor shall make, in quadruplicate, a certificate, to be known as a delinquent land tax certificate of each delinquent tract of land, city or town lot, or part of lot contained in the delinquent land list, upon which the taxes, assessments, penalties and interest have not been paid, describing each tract of land, city or town lot the same as it is described on the tax list and the amount of taxes, assessments, penalty and interest thereon due and unpaid, and stating therein, that the same has been certified to the prosecuting attorney of the county as delinquent. Such certificate shall be signed by the county auditor, or his deputy, and the original filed with the prosecuting attorney, one copy with the county treasurer, and one copy sent to the auditor of state.”

From the language of the above sections, I think it may be clearly inferred that a delinquent land tax certificate should be made for each tract of land, city or town lot, or part thereof. Where two or more lots or parts thereof form but a single tract or lot and are carried on the tax list and duplicate as a single entry, a single delinquent land tax certificate should suffice for such entry.

It should be further noted that section 5718-3, General Code, provides in part as follows:

“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 appeals, where an appeal is allowed, and the court shall make such order for the payment of costs as shall be deemed equitable and proper.”

In conclusion, and in specific answer to your questions, it is my opinion that:

An order of reappraisal and sale may be issued in a delinquent land tax foreclosure proceedings where the premises have been appraised as provided in section 5718, General Code, offered for sale but returned unsold for want of bidders.

There is no authority for the confirmation of a tax lien foreclosure sale without appraisal where the amount of bid is less than the total amount of the taxes and assessments, or any part thereof, found due and unpaid, and the penalties, interest, costs and charges, together with all taxes and assessments payable subsequent to the certification for foreclosure and costs of such action charged against the property in question. If an appraisal has been had, as provided in section 5719, General Code, such lands shall be sold for at least two-thirds of the appraised value thereof and after payment of costs, the treasurer shall receive the balance thereof in full discharge of all taxes, assessments, penalties, interest and charges included in the finding.

Section 5718, General Code, requires the county auditor to make a separate delinquent land tax certificate for each entry on the tax list and duplicate which is to be certified for foreclosure or forfeiture. Such entry may contain two or more tracts or lots or parts thereof if, when taken together, they form only one parcel and have been carried as a single entry on the duplicate.

Respectfully,

THOMAS J. HERBERT,
Attorney General.