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1. FORFEITED LANDS SOLD—PURCHASER INVESTED WITH TITLE FREE FROM ALL REAL ESTATE TAX LIENS—EXCEPTION—TAXES AND INSTALLMENTS OF SPECIAL ASSESSMENTS AND REASSESSMENTS NOT DUE AT TIME OF SALE—SECTIONS 5723.05, 5723.12 RC.
2. TAXES BECOME DUE OCTOBER 1st IN EACH YEAR—DATE REQUIRED TO BE ENTERED ON TAX LIST AND DUPLICATE—DUPLICATE REQUIRED TO BE CERTIFIED TO COUNTY TREASURER—TAXES BECOME LIEN JANUARY 1st—SECTIONS 319.28, 5719.01 RC.

SYLLABUS:

1. Where forfeited lands are sold in proceedings as provided in Section 5723.05, Revised Code, the purchaser is invested with a title free from all real estate tax liens except taxes and installments of special assessments and re-assessments not due at the time of such sale as provided in Section 5723.12, Revised Code.

2. Taxes do not become "due" within the meaning of Section 5723.12, Revised Code, until October 1st in each year at which date they are required to have been entered on the tax list and duplicate and such duplicate is required to be certified to the county treasurer as provided in Section 319.28, Revised Code, notwithstanding that such taxes have become a lien on January 1st of such year as provided in Section 5719.01, Revised Code.

Columbus, Ohio, December 21, 1954

Hon. Glenn L. Fortune, Prosecuting Attorney
Carroll County, Carrollton, Ohio

Dear Sir:

I am in receipt of your request for an opinion reconciling Sections 5719.01, 5723.05 and 5723.12, Revised Code. These sections provide:

Section 5719.01, Revised Code:

"The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for the year 1954 and each year thereafter shall attach to all real property subject to such taxes on the first day of January, annually, and continue until such taxes and any penalties, interest, or other charges accruing thereon are paid, * * *."

Section 5723.05, Revised Code:

"If the taxes, assessments, penalties, interest, and costs due on the forfeited lands have not been paid when the county auditor fixes the date of his annual sale, the auditor shall give notice thereof once a week for two consecutive weeks prior to the first day of July in each year, * * * each such forfeited tract, on which the taxes, assessments, penalties, interest, and costs remain unpaid will be offered for sale beginning on a date to be set by the auditor, which date shall be not later than the first day of July of each year, * * *."

Section 5723.12, Revised Code:

"* * * When a tract of land has been duly forfeited to the state and sold under such sections, the conveyance of such real estate by the auditor shall extinguish all previous title and

invest the purchaser with a new and perfect title, free from all liens and encumbrances, except taxes and installments of special assessments and reassessments not due at the time of such sale,
* * *.”

Your question is whether taxes for a given year which are a lien but not yet ascertainable are due on forfeited land sold prior to July 1st of the year. In a recent informal opinion, Informal Opinion No. 404, I was presented with a similar problem regarding Section 5719.25, Revised Code, which reads:

“If land held by tenants in common is sold upon proceedings in partition, or taken by the election of any of the parties to such proceedings, or real estate is sold at judicial sale, or by administrators, executors, guardians, or trustees, the court shall order that the taxes, penalties and assessments then due, and interest thereon, which are a lien on such land or real estate at the time of the sale, be discharged out of the proceeds of such sale or election.”

After a review of the authorities, *Kitchum v. Fitches*, 13 Ohio St., 201, *Hoglen v. Cohen*, 30 Ohio St., 436, *Malley v. Whitmore*, 61 Ohio St., 587, and *Magnolia Building & Investment Company v. Sulzman*, 57 Ohio App., 431, I held that no taxes were due against land until after October 1st of the year, that being the date when the county auditor is to certify the duplicate to the treasurer for collection. Section 319.28, Revised Code.

The leading authority for the above proposition is *Hoglen v. Cohen*, supra, where the court wrote at pages 443 and 444:

“We think that from the 1st day of October, annually, the taxes levied against the land, are so far due and payable, that they should be discharged out of the proceeds arising from a judicial sale. * * *”

Since Section 5723.12, Revised Code, excepts “taxes * * * not due at the time of such sale * * * when title is passed to a purchaser of forfeited lands,” I accordingly conclude that:

1. Where forfeited lands are sold in proceedings as provided in Section 5723.05, Revised Code, the purchaser is invested with a title free from all real estate tax liens except taxes and installments of special assessments and reassessments not due at the time of such sale as provided in Section 5723.12, Revised Code.

2. Taxes do not become "due" within the meaning of Section 5723.12, Revised Code, until October 1st in each year at which date they are required to have been entered on the tax list and duplicate and such duplicate is required to be certified to the county treasurer as provided in Section 319.28, Revised Code, notwithstanding that such taxes have become a lien on January 1st of such year as provided in Section 5719.01, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General