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DELINQUENT LANDS — OMITTED FROM FORECLOSURE BY ACTION OF BOARD OF REVISION, SECTION 5718-1 G. C. — COMMON PLEAS COURT CONFIRMED ACTION AND ORDERED SUCH DELINQUENT LANDS FORFEITED TO STATE — COUNTY AUDITOR MAY AT ANY TIME THEREAFTER, UP TO FIRST DAY OF JULY, NEXT FOLLOWING, AFTER PUBLISHED NOTICE, PROCEED TO SELL SUCH FORFEITED LANDS — SECTION 5751 G. C.

SYLLABUS:

When delinquent lands have been omitted from foreclosure by action of the board of revision, as provided in Section 5718-1, General Code, and the common Pleas Court has confirmed such action and ordered such delinquent lands forfeited to the State of Ohio, the county auditor may at any time thereafter, up to the first day of July next following, upon giving the published notice required by Section 5751 General Code, proceed to sell such forfeited lands.

Columbus, Ohio, June 19, 1944

Hon. D. Deane McLaughlin, Prosecuting Attorney
Canton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Auditor of Stark County is initiating proceedings for the forfeiture of lands on which taxes and assessments are delinquent. A list of delinquent lands has been prepared and is about to be submitted to the Board of Revision so that they may act to omit certain parcels from the foreclosure list. I have before me the Amended Act pertaining to Forfeiture, Ohio General Code 5704 et seq.

Section 5750 provides that the Auditor shall make a list of all forfeited lands and lots between the first Monday of November and the first day of January and shall proceed to sell under the provisions of the Act.

Section 5751 provides that if the delinquencies are not paid by the 15th day of January, the Auditor prior to the first day of July, shall advertise notice that if taxes are not paid by a

certain day, the tracts shall be offered for sale beginning on a certain day not later than July 1st.

If the Board of Revision now omits certain lands from the foreclosure list, and the Common Pleas Court declares such lands forfeited and notice of the sale published as provided in Section 5751, may the Auditor proceed to hold his sale of forfeited lands prior to July 1st of this year?"

The provisions of law relative to forfeiture and sale of delinquent lands are found in Chapters 14 and 15, Part Second, Title I of the General Code, which includes Sections 5704 to 5773 of the General Code.

These provisions of the statutes underwent considerable change at the hands of the 95th General Assembly in the passage of House Bill 260. Such of these changes as are pertinent will be noted as we proceed.

Section 5704 provides that after each August settlement the county auditor shall make and certify a list and duplicate thereof of all delinquent lands in the county, and provides further for the publication of a preliminary notice and a further notice with a complete list of the lands so certified. Section 5705 defines "delinquent lands" as being those upon which the taxes and assessments, or either, together with the penalties, remain unpaid at two consecutive semi-annual tax settlement periods.

Section 5718 requires the auditor, at the expiration of two years after the above mentioned certification to make, in duplicate, a certificate known as a delinquent land tax certificate as to each delinquent tract of land and to file such certificate with the prosecuting attorney.

Section 5718-1 provides that prior to making the certificates required by the preceding section, the auditor shall submit the list of lands on the delinquent list subject to foreclosure, to the county board of revision, which is authorized to omit therefrom all properties which in its opinion will not upon sale bring a sufficient amount to pay the amount charged on the tax duplicate and the cost of foreclosure.

Section 5718-1a requires the prosecuting attorney to file an application in the common pleas court, setting out the action of the board of

revision as to omitted lands, including lands which have been previously omitted and forfeited to the state and not disposed of, and praying for a hearing and an order confirming the action of such board and ordering such omitted lands to be forfeited to the state.

Section 5718-1b provides for setting a day for the hearing of objections to the action of the board of revision, and provides for publication of notice of such hearing, containing a list of such omitted lands.

Section 5718-1c provides for the hearing of objections which may have been filed and for an order by the court, declaring such lands to be forfeited to the state, excepting those as to which the court may find the objections well taken. This section further provides as to those which the court finds should be forfeited: "Such lands shall thereupon be forfeited to the state of Ohio and disposed of as provided by chapter 15 of this title."

Coming then to the provisions of Chapter 15, we find that Section 5744 as amended, reads in part as follows:

"In addition to the land and town lots forfeited to the state as provided in section 5718-1c, every tract of land and town lot offered for sale in foreclosure proceedings, as provided in the next preceding chapter, and not sold for want of bidders shall also be forfeited to the state. * * *"

The proceedings for the sale of forfeited lands are found in Section 5750 et seq. Section 5750 reads as follows:

"The several county auditors, annually between the first Monday of November and the first day of January, shall make a list of all forfeited lands and lots in the county and shall sell the forfeited lands and lots agreeably to the provisions of this chapter. Lands and lots so forfeited, which, for any cause have not been so offered, shall be offered for sale under the provisions of this chapter, and if not sold for want of bidders, shall be again advertised and offered for sale by the county auditor, at the next subsequent sales by him made, under this chapter, until such lands and lots are sold."

Section 5751 reads as follows:

"If the taxes, assessments, penalties, interest and costs due on the forfeited lands have not been paid on or before the

fifteenth day of January of each year, the county auditor shall cause notice thereof to be advertised once a week for two consecutive weeks prior to the first day of July in each year, in two newspapers as provided in section 5704 of the General Code. Such notice shall state that if the taxes, assessments, penalties, interests and costs charged against the lands forfeited to the state for non-payment of taxes are not paid into the county treasury and the treasurer's receipt produced, therefor before the time specified in said notice for the sale of said lands, which day shall be named therein, each tract, so forfeited, 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 county auditor, which date shall be not later than July first of each year, at the court house in such county. in order to satisfy such taxes, assessments, penalties, interest and costs, and that such sale will continue from day to day until each of such tracts is sold or offered for sale."

At this point we find a substantial change from the former procedure. It was required by Sections 5750 and 5751, General Code, before amendment, that the several county auditors annually between the first Monday of November and the first day of January should make a list of all forfeited lands and lots and forward it to the Auditor of State who, after comparing it with his records and correcting any errors or omissions, should return it to the several county auditors. It was further required that the auditor of each county upon receiving such list from the Auditor of State, should, if the taxes were not paid by the 15th of January next ensuing, cause notice thereof to be advertised for two weeks prior to the second Monday in March, and then offer such forfeited lands for sale. It will be noted that under the present law all reference to the State Auditor and all action by him are eliminated and it is made the duty of the county auditor to proceed with the sale of such forfeited lands at any time after the 15th day of January, and to hold such sale not later than the first day of July after giving notice by publication for two weeks.

I take it to be the essence of your inquiry, to raise the question whether it is the duty of the county auditor in case the proceedings have been had by the prosecuting attorney and the court as contemplated by Sections 5718-1a to 5718-1c subsequent to the first day of January, to proceed with such sale on or before the first day of July next following. In other words, may the auditor proceed at once to the sale of such forfeited lands as are embodied in the court's order, or must he wait until the period between the first Monday in November and the first

day of January following, and then make the list of forfeited lands as contemplated by Section 5750, and thereafter proceed to sell. The answer would seem to turn upon the question whether or not the provision of Section 5750 requiring the making of a list of forfeited lands between the first Monday in November and the first day in January is mandatory or directory. This question was the subject of an opinion which I rendered on February 23, 1939, found in Opinions of the Attorney General for 1939, page 237, the first syllabus of which is as follows:

“While the provisions contained in sections 5718-2 and 5750, General Code, for the publication of the lists of lands to be forfeited, and the forwarding of the lists of forfeited lands to the Auditor of State are mandatory, the forwarding of such lists to the Auditor of State between the first Monday in November and the first day of January is directory only as to the time of forwarding the same. When such list is forwarded to the Auditor of State after the first day of January, a sale of such forfeited lands may be legally held on the second Monday in March if the Auditor of State corrects any errors and omissions and returns such list to the county auditor in time to permit the county auditor to complete advertisement of such list prior to the sale.”

As will be noted when that opinion was rendered, the old law was in force requiring the list of forfeited lands to be forwarded to the Auditor of State and by him corrected and returned prior to proceeding to advertise and conduct the sale. In the course of that opinion, at page 241, it was said:

“Although section 5750, General Code, provides for the forwarding by the county auditors of their lists of forfeited lands to the Auditor of State between the first Monday in November and the first day of January, it is obvious that the forfeiture is not predicated or dependent upon such forwarding, such list being a list of lands already forfeited. Neither is such forwarding included in any of the steps outlined for the sale of such lands. The object is to apprise the Auditor of State, who supervises the work of the county auditors, and to permit the Auditor of State to correct any errors or omissions in such list prior to taking the steps necessary to conduct the sale of such forfeited lands.

I am, therefore, of the opinion that the provision requiring county auditors to make a list of such forfeited lands and forward the same to the Auditor of State between the first

Monday in November and the first day of January is directory only and is for the purpose of giving the Auditor of State sufficient time to correct and return the list in time to permit advertisement as provided in section 5751, General Code, prior to the second Monday of March, the date of sale. Hence, when the county auditor is delayed in forwarding such list to the Auditor of State, but receives such list back from the Auditor of State in time to permit publishing the required notice of sale prior to the second Monday in March, the sale may be legally held on that date. It is not necessary to wait until the following year to advertise and conduct such sale."

I have no hesitancy in applying that conclusion to the present situation. In fact it is more obvious as the law now stands, than it was then. There is nothing left of Section 5750 except a provision that the auditor shall between the dates mentioned, make a list of all forfeited lands and lots in the county, and sell the same pursuant to the provisions of this chapter. As a matter of fact, the previous steps required would seem to leave little for the auditor to do at this time except to proceed with the sale. There could be no invasion of any rights of delinquent property owners inasmuch as they have already had repeated notices of the delinquency and the proceedings leading to forfeiture of these lands. Accordingly, it is my opinion that the provision of Section 5750 requiring the list of forfeited lands to be made between the first Monday in November and the first day of January is only directory as to time. If in your present situation your published notice of sale required by Section 5751, General Code, has been given, there is no reason why your auditor should not proceed with his sale.

Therefore, in specific answer to your question it is my opinion that when delinquent lands have been omitted from foreclosure by action of the board of revision as provided in Section 5718-1, General Code, and the Common Pleas Court has confirmed such action and ordered such delinquent lands forfeited to the State of Ohio, the county auditor may at any time thereafter, up to the first day of July next following, upon giving the published notice required by Section 5751, General Code, proceed to sell such forfeited lands.

Respectfully,

THOMAS J. HERBERT

Attorney General