execution be issued and the levy made within a year after rendition of the judgment.

These observations find support in the case of Waldeck v. Bedell, 59 Ohio App., 520, the syllabus of which I quote as follows:

> "1. The provisions of Section 11708, General Code, that no judgment on which execution is not issued and levied within a year after its rendition shall operate as a lien to the prejudice of other judgment creditors must be construed in their relation and applicability with Section 11656 et seq., General Code, the so-called New Judgment Lien Law.
>
> 2. By filing a certificate of judgment in the office of the clerk of courts of the county in which land is situated, a lien attaches to all the land of the judgment debtor in such county; but if execution is not issued within one year thereafter, as provided by Section 11708, General Code, the judgment will not operate as a lien upon the estate of the judgment debtor to the prejudice of any other bona fide judgment creditor."

I am therefore of the opinion that a certificate of judgment filed pursuant to Section 11656, General Code, will obviate the necessity of a "paper levy" for a period of not to exceed one year after the rendition of the judgment, but that levy must be made within such period if the judgment lien is to have priority against other bona fide judgment creditors.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1574.

DELINQUENT TAXES AND ASSESSMENTS—AMENDED SENATE BILL No. 3, 93RD GENERAL ASSEMBLY—ENACTED TO ENCOURAGE PAYMENT—AVAILABLE TO ANY PERSONS NAMED IN SECTION 2671-1, G. C.—LIEN HOLDERS—TIME, PRIOR TO DATE LANDS ARE SOLD—PROVISIONS NOT AVAILABLE TO PURCHASER AFTER SALE—FORECLOSURES, MORTGAGE OR TAX—DELINQUENT CERTIFICATION—FORECLOSURE LIST.

SYLLABUS:

Amended Senate Bill No. 3 of the 93rd General Assembly was enacted for the purpose of encouraging the payment of delinquent taxes and assessments and its provisions are available to any of the persons named in Section 2671-1 thereof, including lienholders, at any time prior

to the date such delinquent lands are sold at judicial sale. The provisions of the act are not available to the purchaser after sale. Such judicial sales include mortgage foreclosures as well as tax lien foreclosures, and it is immaterial whether or not such lands have been certified delinquent and entered upon the foreclosure list prior to the date of such sale.

COLUMBUS, OHIO, December 14, 1939.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

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

> "In answer to a request 'Can a land owner or lien holder, whose lands have been certified to the Prosecuting Attorney for foreclosure, take advantage of any of the provisions of Amended Senate Bill No. 3,' the last paragraph of your Opinion No. 892, dated July 18, 1939, reads as follows:
>
> 'In conclusion and specifically answering your request, it is my opinion that a land owner or lien holder may take advantage of Amended Senate Bill No. 3 of the 93rd General Assembly after foreclosure proceedings have been instituted against said lands, at any time prior to the date of sale, by paying the costs incurred in foreclosure proceedings and either paying the taxes, assessments, penalties, interest and other charges as provided in Section 3 of the act, or entering into the undertaking provided in Section 3 of the act."
>
> The last paragraph of your Opinion No. 902, dated July 20, 1939, reads as follows:
>
> 'It is therefore my opinion that the benefits of Amended Senate Bill No. 3 of the 93rd General Assembly, known as the Whittemore Act, are not available when the lands were sold in a foreclosure proceedings before the effective date of the act, even though the confirmation be filed after the effective date, Section 5692, General Code, requiring the payment of all taxes, assessments, penalties and interest due thereon at the time of sale.'
>
> Our request is: Does the last paragraph of Section 15 of Amended Senate Bill No. 3 apply to tax foreclosure cases only or does it apply also to mortgage and other lien foreclosure proceedings? A specific example: In a foreclosure of *mortgage* proceedings a junior lien holder purchased real estate at sheriff's sale *after* Amended Senate Bill No. 3 went into effect. May

the County Treasurer legally accept from such a purchaser (junior lien holder) after the sheriff's sale and at any time before delivery of the deed by the sheriff, 'a sum of money equal to the delinquent taxes and assessments less penalties, interest and charges for the year 1936 and prior thereto plus the taxes and assessments, penalties, interest and charges for the years 1937 and 1938 in full satisfaction of all taxes and assessments now a lien on the real estate.'

Further, in mortgage foreclosure proceedings where the lands have not been entered by the County Auditor on the foreclosure list on account of delinquent taxes nor have they been certified to the Prosecuting Attorney for foreclosure, may the junior lien holder who purchased the premises at sheriff's sale obtain the benefits of any provisions of Amended Senate Bill No. 3 at any time before delivery of the deed by the sheriff?"

The purpose of Amended Senate Bill No. 3, enacted by the 93rd General Assembly, popularly known as the Whittemore Act, is to stimulate and encourage payment of delinquent taxes by providing taxpayers with an easy plan of payment and an abatement of certain penalties and interest upon conformity with the requirements of the act. Section 2672-17, General Code, in explaining the reason for the enactment and the nature of the emergency, states:

"That general economic conditions have made it impossible for many taxpayers to accumulate sufficient money to pay taxes and assessments charged on the real estate duplicate in semi-annual installments, as heretofore provided by law, whereby the amount and proportion of delinquent taxes and assessments have greatly increased in substantially all the counties in this state, and the taxing district entitled to share in the proceeds of such taxes and assessments have thereby suffered substantial failure in revenue, and have been curtailed and impaired in the performance of their necessary functions of government; so that it is immediately necessary to provide an inducement for the prompt payment of such taxes and assessments and a means whereby taxpayers can more conveniently discharge their public obligations with respect to the payment of such taxes and assessments, to the end that the amount of such delinquency may be quickly reduced."

In order to afford fullest opportunity to taxpayers and in order to collect the greatest possible amount of delinquent taxes, it was provided as pointed out in Opinion No. 896, rendered July 18, 1939, the last paragraph of which you have included in your inquiry, that the provisions of

the Whittemore Act are available to taxpayers "at any time prior to the date of sale." This construction is based mainly upon the provisions of the third paragraph of Section 2672-15 of the act, which is as follows:

> "Nothing in this act shall affect the right of the prosecuting attorney to institute and complete proceedings to foreclose the lien of the state under Sections 5718-3 and 5719 of the General Code of Ohio, nor the jurisdiction and power of the common pleas court under said sections of the General Code unless prior to the date of sale, the costs incurred in foreclosure proceedings shall have been paid and an undertaking shall have been entered into pursuant to this act, covering the payment of such delinquent taxes and assessments."

After the foreclosure sale, however, there is no longer any reason for offering any inducement for the payment of taxes. Thereafter the taxes must be paid from the proceeds of the sale. In 37 O. Jur., 594, Section 331, the following rule of construction is given:

> "The general assembly, in enacting a statute, is assumed, or presumed, to have legislated with full knowledge and in the light of all statutory provisions concerning the subject-matter of the act, because the legislative mind, in the enactment of a statute, is directed to what has been enacted and exists as a part of the statutory law of the state on the same subject, or subjects related to it. It is therefore a fundamental rule of statutory construction that sections and acts in pari materia should be construed together as if they were a single statute."

At the time Amended Senate Bill No. 3 was enacted, Section 5719, General Code, contained the following provisions for the distribution of the proceeds:

> "From the proceeds of the sale the cost shall be first paid, next the amount found due for taxes, assessments, penalties, interest and charges, next the amount of any taxes and assessments accruing after the entry of the finding and before sale, all of which taxes, assessments, penalties, interest and charges shall be deemed satisfied, though the amount applicable thereto be deficient, and the balance, if any, shall be distributed according to law."

Although Section 5719 has been amended since the effective date of Amended Senate Bill No. 3, the above portion of the section remains unchanged. Your inquiry suggests the case of a mortgage foreclosure

whereat a junior leinholder purchased the premises after the effective date of Amended Senate Bill No. 3. The answer to this question appears the same. Section 5692, General Code, in its present form, was also in effect at the time of the enactment of Amended Senate Bill No. 3. This section is, in so far as pertinent to your inquiry, as follows:

> "When land * * * or real estate is sold at judicial sale * * *, the court shall order the taxes, penalties, 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. * * *"

It thus appears obvious that after a judicial sale it would be useless and inconsistent to offer any inducement for the payment of taxes. It is the plain duty of the court to order the payment of taxes to be discharged out of the proceeds of the sale.

Section 2672-1 of the act provides:

> "Any such person being the owner of such real property or the holder of a lien thereon 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 for the year 1936 and prior thereto, and plus penalties, interest and other charges for the year 1937 and years subsequent thereto, in ten 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 the written 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 statutes of this state to the contrary notwithstanding."

It might be contended that the stipulation that the provisions of this act shall govern, "anything in the permanent statutes of this state relating to the payment of real property taxes * * * to the contrary notwithstanding" would be sufficient to constitute the Whittemore Act an exception to the provisions of Sections 5719 and 5692, General Code. But, as pointed out in the opinion of a former attorney general, 1936 Opinions of the Attorney General, No. 5103, in discussing this same question with reference to a former enactment of the Whittemore Act, Senate Bill No. 359 of the 91st General Assembly:

> "While Senate Bill No. 359 provides that delinquent taxes, less penalties and interest may be paid in installments, anything in the permanent statutes relating to the payment of real property taxes to the contrary notwithstanding, yet it can hardly be contended that Section 5692, supra, is a statute relating to the payment of taxes. In other words, Senate Bill No. 359 provides for exceptions to those permanent statutes relating to the payment of taxes, and does not in any way affect the law relative to the distribution of the proceeds of a foreclosure sale. Moreover, it must be borne in mind that statutes providing for exceptions to general laws must be strictly construed. In the case of Hoglen vs. Cohan, 30 O. S., 436, it was held that all taxes due and payable shall be discharged out of the proceeds arising from a judicial sale.
>
> By the terms of Section 2653, General Code, a person charged with taxes due and payable, may elect to pay such taxes in two installments, one in December and the other in the following June. This section was enacted in its present form in 1859 (56 O. L., 101), and was in force and effect at the time of the above decision. If it could be said that, under the provisions of Senate Bill No. 359, supra, the sheriff would be required to distribute only one-tenth of the delinquent taxes, then under Section 2653, General Code, only one-half of the current taxes then due could be distributed, which, of course, is contrary to the holding in the Hoglen case, supra. In view of the above, it would therefore appear that from the proceeds of a foreclosure sale, all taxes, penalties and interest thereon should be discharged."

In the request for the 1936 opinion, the then Attorney General was asked if the mortgagee purchaser at a foreclosure sale could thereafter take advantage of the Whittemore Act (Senate Bill No. 359, supra). The syllabus of this opinion reads:

> "1. When real estate is sold in a mortgage foreclosure action, the sheriff must pay from the proceeds of such sale all

taxes, penalties, assessments then due, and interest thereon, which are a lien on the real estate sold, at the time of the sale.

2. A mortgagee who purchases real estate at a mortgage foreclosure sale, may not under the provisions of Senate Bill No. 359 of the 91st General Assembly, elect to pay one-tenth of the delinquent taxes and assessments on such real estate."

The same interpretation of Amended Senate Bill No. 3 causes no conflict with Sections 5719 and 5692, supra. It applies with equal force to all foreclosure actions, whether for delinquent taxes or mortgages, and regardless of whether the lands involved have been certified delinquent and entered on the foreclosure list or not.

It is therefore my opinion that Amended Senate Bill No. 3 was enacted for the purpose of encouraging the payment of delinquent taxes and assessments and its provisions are available to any of the persons named in Section 2672-1 thereof, including lienholders, at any time prior to the date such delinquent lands are sold at judicial sale. The provisions of the act are not available to the purchaser after sale. Such judicial sales include mortgage foreclosures as well as tax lien foreclosures, and it is immaterial whether or not such lands have been certified delinquent and entered upon the foreclosure list prior to the date of such sale.

Respectfully,

THOMAS J. HERBERT,

Attorney General.

1575.

TOWNSHIP TRUSTEES—NO AUTHORITY UNDER SECTION 3427-1, G. C. TO EXPEND TOWNSHIP FUNDS TO CONSTRUCT SWIMMING POOL IN PARK—OWNERSHIP AND CONTROL IN VILLAGE OF SUCH TOWNSHIP—OFFICES INCOMPATIBLE—TOWNSHIP TRUSTEE AND MEMBER, BOARD OF PARK COMMISSIONERS OF TOWNSHIP—SECTIONS 3415 ET SEQ., G. C.

SYLLABUS:

1. Township trustees are without authority under Section 3427-1, General Code, or any other section, to expend funds of a township for the purpose of constructing a swimming pool in a park owned and under the control of a village located in such township.

2. The offices of township trustee and a member of the board of park commissioners of a township created under the provisions of Section 3415, et seq., of the General Code, are incompatible.