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REAL ESTATE—FORFEITED TO STATE FOR NONPAYMENT OF REAL ESTATE TAXES AND ASSESSMENTS—WHERE VALID SALE AND CONVEYANCE MADE BY COUNTY AUDITOR, PURCHASER INVESTED WITH A NEW AND PERFECT TITLE FREE FROM ALL PRIOR LIENS AND ENCUMBRANCES, INCLUDING LIEN OF STATE OF OHIO FOR DELINQUENT FRANCHISE TAXES AND PENALTIES—EXCEPTION, TAXES AND INSTALLMENTS OF SPECIAL ASSESSMENTS AND REASSESSMENTS NOT DUE AT TIME OF SALE—EXCEPTION, EASEMENTS AND COVENANTS RUNNING WITH THE LAND CREATED PRIOR TO TIME TAXES OR ASSESSMENTS BECAME DUE AND PAYABLE AND NONPAYMENT RESULTED IN LAND FORFEITURE.

**SYLLABUS:**

When real estate has been forfeited to the state for nonpayment of real estate taxes and assessments and a valid sale and conveyance of such real estate has been made by the County Auditor, such sale invests the purchaser with a new and perfect title free from all prior liens and encumbrances, including the lien of the State of Ohio for delinquent franchise taxes and penalties, but excepting taxes and installments of special assessments and reassessments not due at the time of such sale, and excepting such easements and covenants running with the land as were created prior to the time the taxes or assessments, for the nonpayment of which the land was forfeited, became due and payable.

Columbus Ohio, February 21, 1947

Hon. Paul T. Landis, Prosecuting Attorney  
Allen County, Lima, Ohio

Dear Sir :

I have before me a request from your office for my opinion which reads as follows :

“In connection with the sale of lands which have been forfeited to the State of Ohio for non-payment of taxes, we have had questions arise relative to the status of corporation franchise tax liens that have been placed on file in the office of the Recorder of Allen County by the Ohio Department of Taxation.

We note that Section 5762 of the General Code of Ohio provides

‘When a tract of land has been duly forfeited to the state and sold agreeably to the provisions of this chapter, the conveyance of such real estate by the County Auditor shall extinguish all previous title thereto and invest the purchaser with a new and perfect title, free from all liens and incumbrances, except taxes and installments of special assessments and reassessments not due at the time of such sale, and except such easements and covenants running with the land as were created prior of the time the taxes or assessments, for the non-payment of which the land was forfeited, became due and payable.’

This statute became effective October 11, 1945.

In our county, lands have been forfeited and sold by the County Auditor since 1940 and the question as to Ohio Franchise Tax Liens being extinguished by such sale, arises out of sales which occurred, of course, prior to the effective date of this statute. Some of these questions arise out of sales that occurred prior to the effective date of Section 5718-1a et seq., to-wit, August 11, 1943, which provide for a court proceedings resulting in a court order declaring the lands forfeited and directing that they be sold by the County Auditor.

We would appreciate your answer to the following questions :

1. Is the lien of the State of Ohio for delinquent corporation franchise tax extinguished by the forfeiture and sale by the County Auditor of the real estate on which the lien attaches —(a) when the sale occurred prior to August 11, 1943, (b) when the sale occurred subsequent to August 11, 1943, but

prior to October 11, 1945, and (c) when the sale occurred after October 11, 1945?

2. If such corporation franchise tax liens are not extinguished by such auditor's sale, can the State of Ohio require the owner of only a part of the real estate subject to such lien, to pay off the entire balance owing on such franchise tax lien in order that the franchise tax lien be released as to this property?"

Provisions for the levying of franchise fees or taxes upon both domestic and foreign corporations are found in Sections 5495, 5498 and 5499, General Code. Such taxes are payable without penalty on or before the fifteenth day of July annually. If not paid on time, penalties are added and such taxes and penalties are made liens on all property in this state belonging to the delinquent corporations. Provision therefor is found in Section 5506, General Code, which reads as follows:

"Annually on the day fixed for the payment of any excise or franchise tax required to be paid by law, such tax, together with any penalties subsequently accruing thereon, shall become a lien on all property in this state of a public utility or corporation, whether such property is employed by the public utility or corporation in the prosecution of its business or is in the hands of an assignee, trustee or receiver for the benefit of the creditors and stockholders thereof. Such lien shall continue until such taxes, together with any penalties subsequently accruing thereon, are paid."

Once the lien for delinquent franchise taxes has attached, the only means provided in Section 5506, General Code, for its removal or cancellation is by the payment of such delinquent franchise taxes and accrued penalties. Succeeding and related statutes provide additional measures to encourage and enforce collection of such taxes, but fail to suggest any other means for removing the liens upon real estate of the delinquent corporations unless it be found in Section 5524, General Code, which authorizes the Attorney General, with the advice and consent of the Tax Commissioner, to compromise or settle any claim for delinquent taxes after certification to him for collection.

Prior to August 11, 1943, at the expiration of three years after certification of the list of delinquent lands required by Section 5704, General Code, it was provided in Sections 5718 and 5718-1, General Code, that the County Auditor should submit such list "to a board composed of the presi-

dent of the Board of County Commissioners, the County Auditor and the County Treasurer.” This board was required to make up the list of lands therefrom to be omitted from foreclosure proceedings. After publication, such lands were forfeited to the state and were sold agreeably to the provisions of Chapter 15 of Part Second of the General Code of Ohio. Concerning such sales, Section 5755, General Code, provided:

“If a tract or parcel of land does not sell at such public sale for an amount sufficient to pay the taxes, assessments, penalties and interest which stand against it, the commissioners of the county in which it is situated, at their regular annual session in June preceding the next regular sale, if in their opinion it is of less value than the amount of taxes, assessments, penalties, and interest due upon it, may order the auditor of the county to offer it for sale at the next regular sale of forfeited lands, and sell it to the highest and best bidder therefor, irrespective of the amount of taxes, assessments, penalties, and interest due upon it. *Such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes, assessments, penalties, and interest which remain after applying the amount thereon for which it was sold.*” (Emphasis added.)

The repeated reference to “taxes, assessments, penalties, and interest” found throughout Chapters 14 and 55 appear to be made generally to real estate taxes and assessments, together with penalties and interest thereon, rather than other types of taxes, such as franchise taxes which may have become liens as provided in Section 5506, *supra*. It would therefore be improper to say that former Section 5755, General Code, alone is dispositive of your questions.

Prior to August 11, 1943, the County Auditor in conducting forfeited land sales was further guided by Sections 5757, 5758 and 5762, General Code, which sections were as follows:

Section 5757.

“If any of such forfeited lands are sold for a greater sum than the amount of such tax, assessment, interest, penalty, and costs of sale, the County Auditor shall charge the County Treasurer separately in each case, in the name of the supposed owner, with the excess above such amount. The treasurer shall retain such excess in the treasury for the proper owner of the forfeited lands, and upon demand by such owner, within six years from the day of sale, shall pay the excess to him.”

## Section 5758.

“If the County Treasurer, upon such demand, if not fully satisfied as to the right of the person demanding, to receive it, if there are several different claimants, he shall commence a civil action by filing a petition of interpleader, in the Court of Common Pleas of the county where the land was sold, wherein he shall make the person or persons claiming the excess, and the state, defendants, and the action shall proceed as other civil actions. The costs of the proceedings shall be paid by the person or persons claiming the excess, as the court shall order. The Prosecuting Attorney of the county shall attend to the action, in behalf of the treasurer.”

## Section 5762.

“The County Auditor on making a sale of a tract of land to any person, under this chapter, shall give to such purchaser a certificate thereof. On producing or returning to the County Auditor the certificate of sale the County Auditor, on payment to him by the purchaser, his heirs, or assigns, of the sum of one dollar and twenty-five cents shall execute and deliver to such purchaser, his heirs, or assigns, a deed therefor, in due form, which deed shall be prima facie evidence of title in the purchaser, his heirs, or assigns.”

The nature of the title obtained by a purchaser at a forfeited land sale has been considered by the courts of this state on numerous occasions. In the early case of *Gwynne v. Niswanger*, 20 Ohio, 556, there was presented to the court the problem of determining the nature of the title received by the purchaser of lands sold at a tax sale. In the majority opinion, it was said:

“\* \* \* We are of opinion that much of the difficulty in this case arises from attempting to make a tax title analogous to an ordinary chain of title. A tax title, from its very nature, has nothing to do with the previous chain of title; does not in any way connect itself with it. It is a breaking up of all previous titles. The party holding such title, in proving it, goes no further than his tax deed; the former title can be of no service to him, nor can it prejudice him.

It was well said by counsel in argument on this point, that a tax sale operated on the property, not the title. In an ordinary case, it matters not how many different interests may be connected with the title, what may be the particular interest of the party in whose name the property may be listed, for taxation; it may be a more equitable right; if the land be regularly sold for

taxes, the property, accompanied with a legal title, goes to the purchaser, no matter how many estates, legal or equitable, may be connected with it."

Gwynne v. Niswanger, *supra*, was unanimously approved and followed in Jones v. Devore, 8 O. S., 430, wherein a widow claimed dower in premises which the defendant had purchased at a tax sale. In the opinion, Scott, J., said:

"\* \* \* A valid tax title, therefore, extinguishes all previous titles, legal or equitable, inchoate or perfect; and the purchaser takes the premises discharged from all previous liens and incumbrances whatever. The tax is assessed upon the land itself, and is a paramount lien upon it; and its payment can be enforced only by the sale of the specific property taxed."

A similar conclusion was reached in Tullis v. Pierano, 9 O. C. D., 103. See also Clark v. Lindsey, 47 O. S., 437, at page 444.

In Kahle v. Nisley, 74 O. S., 328, the Supreme Court held:

"Where, under Section 2899, Revised Statutes, lands have been duly forfeited to the state for the nonpayment of taxes and penalty, a valid sale and conveyance of such lands by the County Auditor, extinguishes all previous titles thereto, either legal or equitable, and invests the purchaser with a new and perfect title to said lands, discharged from all previous liens and incumbrances."

Kahle v. Nisley, *supra*, was followed with approval in Cech v. Schultz, 132 O. S., 353. The syllabus of the former case was quoted in full showing that under the statutes, which were the same as those in force on August 11, 1943, a forfeited land sale extinguished *all* previous titles to the premises sold and "invests the purchaser with a new and perfect title to said lands, discharged from all previous liens and incumbrances." After quoting Section 5762, General Code, Jones, J., observed in substance that the conferring on the purchaser of a "*prima facie* evidence of title" must be construed as meaning that the title of the purchaser is absolute.

In the case of Dubin v. Greenwood, 139 O. S., 546, Judge Zimmerman said:

"The question presented is whether a purchaser of realty duly forfeited to the state for the nonpayment of taxes, assess-

ments, etc., who receives a deed for such realty from a County Auditor, pursuant to Section 5762, General Code, acquires title free from all liens and encumbrances."

The forfeited land sale in question was made on June 15, 1939. In answer to the above question, the court held:

"Where real estate has been forfeited to the state for the nonpayment of taxes, assessments, etc., under and in accordance with the applicable statutes, a valid sale and conveyance of such real estate by a County Auditor extinguishes all previous titles thereto and invests the purchaser with a new and perfect title, free from prior liens and encumbrances. (Kahle v. Nisley, 74 Ohio St., 328, and Cech v. Schultz, 132 Ohio St., 353, approved and followed."

It would appear paradoxical indeed to say unequivocally, as the courts repeatedly have, that a purchaser at a forfeited land sale receives a new, independent and absolute title, discharged from all previous titles, liens and encumbrances, but that the lien of the state for unpaid franchise taxes still continues. The purpose of the legislature in the enactment of Section 5506, General Code, providing for a franchise tax lien, seems clearly to have been to encourage and secure the payment of delinquent franchise taxes. There can be no doubt but that forfeited land sales were designed as a method for the collection of delinquent real estate taxes and assessments. Section 5713, General Code, provides in part:

"The state shall have a first and best lien on the lands and lots described in the delinquent land list, for the amount of taxes, assessments, and penalty charged prior to the delivery of such list, together with interest on the principal sum of such taxes and assessments at the rate provided by Section 5679 of the General Code \* \* \*."

If delinquent franchise tax liens were permitted to remain on lands sold at forfeited land sales, such sales would have the effect of removing the liens of the real estate taxes and assessments which were first and best liens on the property sold even though the real estate taxes and assessments were only partially satisfied by the sale proceeds. This in turn would have the effect thereupon of making the delinquent franchise tax liens first and best liens. The result of such an interpretation seems apparent. It would tend to defeat the provisions of Section 5713, General Code. It would discourage bidding at forfeited land sales. Such bids

as might be made would be reduced in each case by the amount of the delinquent franchise tax lien, which the purchaser would be obliged thereafter to pay. In at least some instances, it would even circumvent bidding, thereby forever preventing collection of the delinquent real estate taxes and the future listing of the property on the general tax list and duplicate in the name of a purchaser who in all probability would thereafter pay current taxes. For these reasons, coupled with the fact that Section 5755, General Code, provided that "Such sale shall convey the title to the said tract or parcel of land, divested of all liability for *any arrearages of taxes*, assessments, penalties, and interest which remain after applying the amount thereon for which it was sold," it seems fair to conclude that since lands sold at forfeited land sales are relieved of the lien of *any arrearages of taxes*, such lands must be relieved of the lien of delinquent franchise taxes.

When forfeited lands are sold for an amount greater than the amount of the taxes, assessments, penalties and interest which stand against it, Section 5757, General Code, requires the treasurer to retain the excess for the proper owner. But if the treasurer is not fully satisfied of the right of the claimant to receive such excess, Section 5758, General Code, says that he shall file a petition of interpleader in the Common Pleas Court. In this action "he shall make the person or persons claiming the excess, *and the state* defendants." What reason could there be for making the State of Ohio a party other than to permit it to set forth any claim it might have against the premises which had been sold? By making the state a party defendant to these interpleader actions, the state is afforded opportunity to protect any liens which it may have against the realty, such as delinquent franchise tax liens, by asserting such liens against the appropriate funds in the hands of the county treasurers. It is as if the legislature had provided for a conversion of the realty into personality and a corresponding transfer of the liens which the state formerly held against the realty.

In part (b) of your first question you are concerned with the effect of the adoption of House Bill No. 260 by the Ninety-fifth General Assembly. By this act many sections in Chapters 14 and 15 of Part Second of the General Code of Ohio were amended. In your inquiry you refer to Section 5718-1a et seq., General Code. These sections state that after a list of lands to be forfeited has been prepared by the board of revision,



the Prosecuting Attorney shall prepare and file in the Common Pleas Court an application for the forfeiture thereof. Time for a hearing is then set and notice by publication given to all interested parties. After the hearing, the court is required to order the list of lands forfeited, eliminating from such list any lands concerning which legal objections have been proven by interested persons. Procedure for the advertisement and sale of such lands by the County Auditor is found in the succeeding sections. Certainly these new and amended sections do not in any way detract from the title acquired by the purchaser at a forfeited land sale. Neither do they suggest in any manner that the delinquent franchise tax lien should remain on the realty sold at forfeited land sales.

To Section 5762, General Code, as a part of the 1943 amendment, the legislature added the following sentence:

“When a tract of land has been duly forfeited to the state and sold agreeably to the provisions of this chapter, the conveyance of such real estate by the County Auditor shall extinguish all previous title thereto and invest the purchaser with a new and perfect title, free from all liens and encumbrances, except such easements and covenants running with the land as were created prior to the time the taxes or assessments, for the non-payment of which the land was forfeited, became due and payable.”

This provision, it will be seen, is merely declaratory of what the Supreme Court had already repeatedly held. Nothing was added thereby to the title acquired by a purchaser, unless it was the express declaration of the legislature showing its intent to be entirely in accord with the previous holdings of the courts. Possibly the amendment of Section 5762, General Code, was inspired by the then recent decision in the case of *Dubin v. Greenwood*, *supra*, and by the long series of judicial challenges which had preceded this case. By taking a firm stand beside the courts in support of the validity of forfeited land sales, the legislature may well have reasoned that the reluctance of potential bidders at such sales would be decreased in a large degree and that the proceeds of future sales would more nearly approach the true value of such properties.

Section 5762, General Code, was again amended by the Ninety-sixth General Assembly, effective October 11, 1945, as you have suggested. The last sentence thereof as it now reads is correctly quoted in your letter requesting my opinion. You will note that the only change in the 1943 amendment is the added exception providing that the purchaser take sub-

ject to "taxes and installments of special assessments and re-assessments not due at the time of such sale." Thus, the legislature has again put its stamp of approval upon and followed the decisions of the courts.

In conclusion and specifically answering your inquiry, it is my opinion that when real estate has been forfeited to the state for nonpayment of real estate taxes and assessments and a valid sale and conveyance of such real estate has been made by the County Auditor, such sale invests the purchaser with a new and perfect title free from all prior liens and encumbrances, including the lien of the State of Ohio for delinquent franchise taxes and penalties, but excepting taxes and installments of special assessments and reassessments not due at the time of such sale, and excepting such easements and covenants running with the land as were created prior to the time the taxes or assessments, for the nonpayment of which the land was forfeited, became due and payable.

Having arrived at this conclusion, it becomes unnecessary to discuss your second question.

Respectfully,

HUGH S. JENKINS,  
Attorney General.