

As I have previously suggested, the county engineer is a public officer. His office exists in each county regardless of work, if any, to be done on public highways. In order to provide and assure an adequate staff of assistants to carry on the highway work, the Legislature has authorized two-thirds of the costs of operation of his office to be paid from the motor vehicle license and motor vehicle fuel tax funds.

In specific answer to your inquiry, it is my opinion that Section 2782-2, General Code, which authorizes two-thirds of the costs of operation of the office of county engineer to be paid out of the county's share of the fund derived from the receipts from motor vehicle licenses, as distributed by Section 6309-2 of the General Code, and from the county's share of the fund derived from the motor vehicle fuel tax, as distributed by Section 5541-8 of the General Code, does not authorize the salary of the county engineer.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1573.

CERTIFICATE OF JUDGMENT—FILED WITH CLERK OF COURTS UNDER SECTION 11656 G. C.—LIEN—ATTACHES TO ALL LANDS WITHIN COUNTY OF JUDGMENT DEBTOR—CONTINUES FIVE YEARS AFTER FILING—STATUS WHERE EXECUTION ISSUED OUT OF COURT OF GENERAL JURISDICTION—SECTION 11656-1 G. C.—WHERE LIEN OBTAINED UNDER EITHER STATUTE—WILL NOT PREVAIL TO PREJUDICE OF ANY OTHER BONA FIDE JUDGMENT CREDITOR, UNLESS EXECUTION AND LEVY BE MADE WITHIN ONE YEAR AFTER RENDITION OF JUDGMENT.

SYLLABUS:

1. *Where a certificate of judgment is filed with the clerk of courts of a county pursuant to Section 11656, General Code, a lien is thereby obtained which attaches to all the lands of the judgment debtor within the county and which continues for a period of five years after such filing.*

2. *Where execution is issued out of a court of general jurisdiction, pursuant to Section 11656-1, General Code, and lands of the judgment debtor are seized in obedience to the command thereof, a lien is thereby obtained on the lands so seized which continues for a period of five years after such seizure.*

3. *Where a lien is obtained on lands of a judgment debtor either by filing a certificate of judgment pursuant to Section 11656, General Code, or by execution and levy pursuant to Section 11656-1, General*

Code, such lien will not prevail to the prejudice of any other bona fide judgment creditor unless execution and levy be made within one year after the rendition of the judgment.

COLUMBUS, OHIO, December 14, 1939.

HON. WILLIAM L. HOWELL, *Prosecuting Attorney, Mount Vernon, Ohio.*

DEAR SIR: In your recent communication you have requested my opinion as to whether a certificate of judgment filed pursuant to Section 11656, General Code, obviates the necessity of a so-called "paper levy" in order to obtain and preserve the lien of a judgment on real estate.

That part of Section 11656, General Code, which is pertinent to your inquiry provides:

"Any judgment or decree rendered by any court of general jurisdiction (including district courts of the United States) within this state shall be a lien upon lands and tenements of each judgment debtor within any county of this state from the time when there shall have been filed in the office of the clerk of the court of common pleas of such county a certificate of such judgment, setting forth the court in which the same was rendered, the title and number of the action, the names of the judgment creditor or creditors and judgment debtor or debtors, the amount of the judgment and costs, the rate of interest (if the judgment provides for interest), and the date from which such interest accrues, the date of rendition of the judgment and the volume and page of the journal entry thereof; * * *"

Section 11656-1, General Code, reads as follows:

"Lands and tenements of a judgment debtor shall also be bound with a lien for the satisfaction of any such judgment of any court of general jurisdiction (including district courts of the United States) within this state, without the filing of such certificate as is provided for in the next preceding section, from the time when the same are seized in execution; and goods and chattels of a judgment debtor shall be bound from the time they are seized in execution."

It is therefore clear that a judgment lien on lands may be acquired by following the provisions of either of these two statutes, viz.: by filing the prescribed certificate or causing a seizure of specifically described land on execution. The lien acquired by filing a certificate attaches to all lands of the judgment debtor in the county from the time the cer-

tificate is filed, but the lien acquired by levy attaches only to the land particularly described in the sheriff's return from the time it is seized.

Section 11663, General Code, provides:

"If neither execution of a judgment rendered in a court of record or certified to the clerk of the court of common pleas in the county in which such judgment was rendered be issued, nor a certificate of judgment for obtaining a lien upon lands and tenements be issued and filed, as provided in Sections 11656 and 11656-2 of the General Code, within five years from the date of such judgment, or within five years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate thereof, whichever be later, then such judgment shall be dormant and shall not operate as a lien upon the estate of the judgment debtor. If, in any county other than that wherein a judgment was rendered, such judgment has become a lien by reason of the filing, in the office of the clerk of the court of common pleas of such county, of a certificate of such judgment as provided in Sections 11656 and 11656-2, and if no execution be issued for the enforcement of such judgment within such county, or no further certificate of such judgment be filed in said county, within five years from the date of issuance of the last execution for the enforcement of said judgment within said county or the date of filing of the last certificate in said county, whichever be the later, then such judgment shall cease to operate as a lien upon lands and tenements of the judgment debtor within such county."

It will therefore be observed that the lien acquired either by the filing of a certificate or by levy on execution continues only for a period of five years unless another certificate be filed or another execution issued. However, in this connection, your attention is directed to Section 11708, General Code, which provides:

"No judgment on which execution is not issued and levied before the expiration of one year next after its rendition, shall operate as a lien on the estate of a debtor to the prejudice of any other bona fide judgment creditor."

While a lien acquired by the filing of a certificate of judgment continues for five years, it will not operate as a lien on the estate of the judgment debtor to the prejudice of a bona fide judgment creditor unless execution be issued and levied before the expiration of a year after the rendition of the judgment. Neither is a lien acquired by levy on execution valid as against a subsequent bona fide judgment creditor unless the

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