

Specifically answering your question, it is my opinion that in foreclosure proceedings under the provisions of Sections 5718 and 5719, General Code, only the taxes which were included in the delinquent land tax certificate are abated, and the taxes and assessments accruing subsequently to the delivery of said certificate are not abated in said foreclosure proceedings, but remain a lien upon the land, unless the same are paid from the proceeds of the sale.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1815.

DELINQUENT TAXES—FORECLOSURE OF LIENS FOR NON-PAYMENT  
—WHAT PARTIES SHOULD BE JOINED—COUNTY TREASURER  
MAY CONTRACT WITH PERSONS FOR COLLECTION.

*SYLLABUS:*

1. *In suits to foreclose liens for non-payment of delinquent taxes, all persons having or claiming an interest in the land should be made parties to said suit and should set up said claim or interest so that the court may determine according to law, their respective rights and interests; and whether said land shall be sold free or subject to said rights and interests.*

2. *The county treasurer may legally contract with some person or persons to collect delinquent personal taxes on a percentage basis, provided the contract is approved by the county commissioners and a definite per cent compensation fixed.*

COLUMBUS, OHIO, March 6, 1928.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“I desire your opinion on the following propositions of law:

Is it necessary to make a lien holder a party defendant in a suit to foreclose a tax lien under Section 5718, G. C.?

Also in the event that the party whose name appears upon the tax duplicate as the owner thereof, is only the owner of the tax title, and the real owner's name does not appear thereon, is it necessary to notify the real owners of the pending suit?

Can the county treasurer legally contract with some person to collect delinquent taxes on a percentage basis not exceeding 25% of the amount collected, provided the contract is approved by the county commissioners?”

In answer to your first question you are advised that I have recently considered the identical question in Opinion No. 1727, rendered under date of February 17, 1928, to Hon. Henry W. Harter, Jr., Prosecuting Attorney, Canton, Ohio, the syllabus of which opinion reads as follows:

“In suits to foreclose liens for nonpayment of delinquent taxes, all persons having or claiming an interest in the land should be made parties

to said suit and should set up said claim or interest so that the court may determine according to law, their respective rights and interests; and whether said land shall be sold free or subject to said rights and interests."

In order that you may read the discussion of the authorities cited and the conclusions reached, I am enclosing a copy of said opinion for your convenience.

In your second question you inquire whether it is necessary in a suit to foreclose a tax lien under Section 5718, General Code, "to notify the real owners" of the pending suit, in the event that the party whose name appears upon the tax duplicate as the owner thereof is only the owner of the tax title.

This question is answered also in Opinion No. 1727, *supra*, in which it is held that:

"All persons having or claiming an interest in the land should be made parties to said suit \* \* \* so that the court may determine according to law, their respective rights and interests; and whether said land shall be sold free or subject to said rights and interests."

In your third question you inquire whether the county treasurer can legally contract with some person to collect delinquent taxes on a percentage basis not exceeding 25% of the amount collected, provided the contract is approved by the county commissioners.

Section 5696, General Code, reads as follows:

"The county commissioners, at each September session, shall cause the list of persons delinquent in the payment on personal property to be publicly read. If they deem it necessary, they may authorize the treasurer to employ collectors to collect such taxes or part thereof, prescribing the compensation of such collectors which shall be paid out of the county treasury. All such allowances shall be apportioned ratably by the county auditor among all the funds entitled to share in the distribution of such taxes."

This section was formerly Section 2858, Revised Statutes.

In the case of *Board of County Commissioners of Hamilton County vs. Arnold*, 65 O. S. 479, the court in considering this question held in the fourth paragraph of the syllabus that:

"Under said Section 2858, the county commissioners must definitely prescribe the compensation of such collectors, before collections are made; and that duty is not performed by prescribing that the compensation shall not exceed a certain amount, or a certain per centum."

It is stated in said opinion that:

"The *list* in this section spoken of is the delinquent list; and the section is mandatory in so far as causing that list to be publicly read. The reading is for the information of the county commissioners, to enable them to judge and determine, from hearing the list read, whether they deem it necessary to authorize the treasurer to employ collectors to collect the list or any part thereof, and to prescribe the proper and reasonable compensation to be paid to such collectors for their services. Without hearing the delinquent list read,

they would have no information upon which to determine whether they deem it necessary to authorize the treasurer to employ such collectors; neither could they determine whether the whole list should be collected by collectors, or only a part thereof, and the remainder by the treasurer, as by other statutes provided; nor could they determine without hearing the list read, what compensation should reasonably be paid for the collections to be made. So that until the delinquent list is caused to be read, the commissioners can take no step toward authorizing the appointment of a collector, and any step taken by them before the reading of such list is absolutely void. The causing of the list to be publicly read is a condition precedent to authorizing the treasurer to employ such collector. It is the manner provided by statute for bringing the question of appointing collectors before them for consideration and determination. Statutes enacted for the protection of the public revenues, are usually not merely directory, but mandatory.

When the delinquent list has been so publicly read, the commissioners may at any time when they deem it necessary, authorize the treasurer to employ collectors to collect the same, or any part thereof; that is, to collect that list which has been so read, but such employment would hold good for that list only and would not extend to the next delinquent list. Each delinquent list must be read and an employment made to collect the same, but there can be no employment of collectors to collect future lists. The employment of such collectors cannot be turned into an office to be held to the end of the treasurer's term, or for any definite period. His employment is to collect the delinquent list which has been read, or some part thereof, and when that is done, his employment ends.

This section of the statute provides that the commissioners shall prescribe the compensation of the collectors; and the provision is not complied with when the commissioners prescribe that it shall not exceed a certain sum, or certain per centum. They are required to fix definitely and exactly what compensation the collector shall receive. It is their judgment that is to be exercised, and not the judgment of the treasurer, though limited by fixed bounds."

It is therefore my opinion that the county treasurer may legally contract with some person or persons to collect delinquent personal taxes on a percentage basis, provided the contract is approved by the county commissioners and a definite per cent compensation fixed.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1817.

TOWNSHIP TRUSTEES—AUTHORITY TO ENTER INTO A CONTRACT  
TO LIGHT TOWNSHIP HALL.

*SYLLABUS:*

*Township trustees may, for the purpose of providing proper lighting for the township hall, enter into a contract with a power company for the lighting and installation of a lighting system for such building, and pay therefor the sum of \$250.00, subject*