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1. COUNTY AUDITOR—IMMEDIATELY AFTER EACH AUGUST SETTLEMENT SHOULD CERTIFY AS DELINQUENT ALL LANDS UPON WHICH TAXES AND ASSESSMENTS, OR EITHER, TOGETHER WITH PENALTIES HAVE NOT BEEN PAID—TWO CONSECUTIVE SEMI-ANNUAL TAX SETTLEMENT PERIODS, AT LEAST, PRECEDING AUGUST SETTLEMENT—LIST SHOULD NOT INCLUDE ANY LANDS INCLUDED IN ANY PREVIOUSLY PUBLISHED LIST—HOUSE BILL 260, 95 GENERAL ASSEMBLY.
2. LANDS CERTIFIED DELINQUENT, PUBLISHED PRIOR TO AUGUST 11, 1943, SHOULD NOT BE SUBMITTED TO COUNTY BOARD OF REVISION FOR FORFEITURE, NOR TO PROSECUTING ATTORNEY FOR FORECLOSURE PROCEEDINGS UNTIL EXPIRATION OF THREE YEARS AFTER CERTIFICATION PROVIDED FOR IN SECTION 5704—SECTIONS 5718, 5718-1 G. C.
3. CERTAIN DESIGNATED LANDS, PROCEDURE FOR FORECLOSURE—EXPIRATION OF TWO YEARS AFTER CERTIFICATION—STATUTORY REQUIREMENTS.

## SYLLABUS:

1. Under the provisions of House Bill No. 260 of the 95th General Assembly, the county auditor immediately after each August settlement should certify as delinquent all lands upon which the taxes and assessments, or either, together with penalties have not been paid for at least two consecutive semi-annual tax settlement periods preceding such August settlement. Such list should not include any lands which have been included in any previously published list.

2. Such lands as were certified delinquent and published as provided by Section 5704, General Code, prior to August 11, 1943 should not be submitted to the county board of revision for forfeiture as provided in Section 5718-1, General Code, nor certified to the prosecuting attorney for foreclosure proceedings as provided in Section 5718, General Code, until the expiration of three years after the certification provided for in Section 5704, General Code.

3. Such lands as are certified delinquent and published as provided in Section 5704, General Code, after August 11, 1943 should be submitted to the county board of revision for forfeitures as provided in Section 5718-1, General Code, and certified to the prosecuting attorney for foreclosure as provided in Section 5718, General Code, at the expiration of two years after the certification provided for in Section 5704, General Code.

Columbus, Ohio, December 2, 1943.

Hon. Joel S. Rhinefort, Prosecuting Attorney,  
Toledo, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

"The County Auditor of Lucas County has given me the following facts and desires an opinion from your office on the questions hereinafter set out.

The facts submitted by the Auditor are as follows:

(1) Up to and including the year 1930 certifications of delinquent lands were made by the County Auditor.

(2) For the years 1931, 1932 and 1933 no certification was made by the County Auditor of delinquent taxes.

(3) On August 25, 1934, the Auditor certified all lands upon which the taxes were delinquent at least two semi-annual consecutive payments totaling \$100 or more, but did not include those of less than \$100, and re-certified all the years for 1930 and prior.

(4) On August 9, 1935 the advertised lists were in the form of an omitted and a foreclosure list for the delinquent land lists of 1930 and prior years.

(5) In the years 1935, 1936, 1937, 1938 and 1939 certifications of delinquent taxes were made of all delinquent taxes on tracts of real estate of \$100 or more.

(6) On December 20, 1940 the County Auditor certified all delinquent taxes for that year and all previous delinquent taxes from 1930 which were less than \$100.

(7) December 5, 1941 the County Auditor certified all delinquent taxes for that year.

(8) In 1942 no certification was made.

(9) No advertisement of the delinquent land lists for years subsequent to 1930 have been made by the Auditor.

It is the desire of the County Auditor to take the necessary steps so that all delinquent land taxes certified since 1930 can be placed or put in a position so that foreclosure proceedings may be had or that the property may be forfeited to the state.

In proceeding under H. B. 260 in order to place the delinquent property in a position of foreclosure or forfeiture, is it necessary that the County Auditor recertify all delinquent taxes from 1930 to and including 1942 before proceedings could be had under this act by foreclosure or forfeiture?

In other words, for any of the years subsequent to 1930 if the list has been certified, is it necessary to re-certify the list for that year and wait the two-year period after certification for foreclosure or forfeiture, or could the Auditor proceed by advertisement of all lists which have been certified since 1930 as above detailed, and when such advertisement was completed foreclosure and forfeiture proceedings be immediately instituted?"

Section 5704 of the General Code, as amended in House Hill No. 260, enacted by the 95th General Assembly and as in effect since August 11, 1943, is as follows:

"Immediately after each August settlement, the county auditor shall make and certify a list and duplicate thereof of all the delinquent lands in his county. If such list has not been previously published, then the first of such delinquent land lists shall contain all lands which have been or may be certified as delinquent and with respect to which an action to foreclose the tax lien thereon has not been filed. Lands which have been included in a previously published list shall not be included in the list herein provided for. Lands on which the only unpaid taxes are amounts claimed in good faith not to be due in complaints pending under section 5609 shall likewise not be included in such list. In subsequent years such list shall contain only those lands which become delinquent during the year preceding such publication. In any list there may be included lands which have been omitted from a prior list. Such delinquent land list and duplicate shall contain the description of the property as it appears on the tax list, the name of the person in whose name it is listed and the amount of taxes, assessments, and penalties thereon due and unpaid at such August settlement. The original land list shall be kept in the office of the county auditor and the duplicate shall be delivered to the county treasurer.

It shall be mandatory upon the county auditor to cause a list of the lands on such delinquent land list and duplicate to be published twice, within sixty days after the delivery of the duplicate to the county treasurer, in two newspapers of opposite politics in the English language published in the county and of general circulation therein; provided, however, that, before such

publication, it shall also be mandatory upon the county auditor to cause a display notice of the forthcoming publication of the delinquent land list and duplicate to be inserted once a week for two consecutive weeks in two newspapers of opposite politics in the English language published in the county and of general circulation therein. The copy for such display notice shall contain the applicable provisions of Section 2653 of the General Code, the times and methods of payment of taxes provided by law, together with any other information which the county auditor may deem pertinent to the purpose of the notice, and shall be furnished by the county auditor to the newspapers selected to publish such delinquent land lists at least ten days before the first publication of such delinquent land list.

A newspaper independent in politics shall be considered to be a newspaper of opposite politics to a newspaper of designated political affiliation.

Where there is no newspaper of designated political affiliation published in such county then publication of such notice and delinquent land lists shall be made in two newspapers independent in politics published in such county and of general circulation therein. If there is only one newspaper published in the county and of general circulation therein whether or not such newspaper be of a designated political affiliation, such display notice and delinquent land list shall be published in it. Publication of delinquent land lists may be made by a newspaper in installments, providing the complete publication thereof is made twice during the said sixty day period.

There shall be attached to the list a notice that the delinquent lands will be entered upon the foreclosure list, as provided by law, unless the taxes, assessments, penalties and interest are paid."

"Delinquent lands" are defined in Section 5705, General Code, as follows:

"Delinquent lands as defined in this chapter shall mean all lands upon which the taxes and assessments, or either, together with penalties, remain unpaid at two consecutive semi-annual tax settlement periods."

Considering these two sections together, it appears to be the duty of the county auditor, immediately after each August settlement, to make and certify a list in duplicate of *all* lands upon which taxes and assessments, or either, together with penalties remaining unpaid for two consecutive semi-annual tax settlement periods. This would lead to the conclusion that such lists should contain all delinquent lands even if a part of such delinquent lands had been certified and published in former years. However, as to such lands an exception has been made for the

third sentence of Section 5704 provides that "lands which have been included in a previously published list shall not be included in the list herein provided for." Since the section further provides that "in any list there may be included lands which have been omitted from a prior list", it appears proper to include in the first list certified and published as provided in Section 5704, General Code, not only such lands as have become delinquent since the preceding August settlement, but also all delinquent lands which had previously become delinquent but had not been included in a previously published list of lands certified as delinquent.

Having made and certified such a list of delinquent lands, it is mandatory for the county auditor to publish such list twice within sixty days after delivery of the duplicate to the county treasurer as provided in the second paragraph of Section 5704, General Code.

The final paragraph of Section 5704 provides:

"There shall be attached to the list a notice that the delinquent lands will be entered upon the foreclosure list, as provided by law, unless the taxes, assessments, penalties and interest are paid."

The foreclosure list is made up under authority of Section 5718, General Code, which now reads as follows:

"At the expiration of two years after certification, the county auditor shall make, in duplicate, a certificate, to be known as a delinquent land tax certificate of each delinquent tract of land, city or town lot, or part of lot contained in the delinquent land list, upon which the taxes, assessments, penalties and interest have not been paid, describing each tract of land, city or town lot the same as it is described on the tax list and the amount of taxes, assessments, penalty and interest thereon due and unpaid, and stating therein, that the same has been certified to the prosecuting attorney of the county as delinquent. Such certificate shall be signed by the county auditor, or his deputy, and the original filed with the prosecuting attorney."

Prior to August 11, 1943 Section 5718, General Code, provided that such certification should be made at the expiration of *three* years.

Before compiling the foreclosure list the county auditor is required by Section 5718-1, General Code, to submit the list of certified delinquent lands subject to foreclosure to the Board of Revision for the purpose of enabling it to prepare a list of forfeited lands. Such section is as follows:

"Before making the certificates provided for in section 5718

of the General Code, the county auditor shall submit the list of lands on the delinquent list and subject to foreclosure to the county board of revision, and if, in its judgment and discretion, such board is of the opinion that such list contains property or properties so certified which will not bring upon a sale a sufficient amount of money to pay the total amount charged against it on the tax duplicate, together with the costs of foreclosure, such board may order the same to be omitted from the foreclosure proceedings hereinafter provided; and as to such land so ordered to be omitted, no delinquent land tax certificate shall be made. The secretary of the board of revision shall keep on file in his office, in the form of a permanent record, the minutes of the meeting of the board at which such lands were omitted, together with a list of the lands so omitted."

Although Section 5718, General Code, provides for the making and certifying of the delinquent land tax certificates, referred to as the foreclosure list, at the expiration of two years after the certification of the delinquent land list, as provided in Section 5704, General Code, it must be remembered that in addition to certification Section 5704 mandatorily requires the list to be published and as a part of the publication requires a notice that such delinquent lands will be entered upon the foreclosure list *as provided by law* unless the taxes, assessments, penalties and interest are paid. The only method provided by law is the certification to the prosecuting attorney two years (formerly three years) after having been certified as delinquent followed by publication within sixty days. The apparent object of the publication is to notify the owners and all persons having any interest in each parcel of land contained in the delinquent land list that taxes and assessments, or either, with penalties and interest are due and unless paid within the two years' (formerly three years) period foreclosure proceedings or forfeiture may result.

If we were to adopt the opposite conclusion it would surely lead to claims by taxpayers that they had been misled. They would be constructively notified that their lands had been certified delinquent. The assumption that the county auditor had followed the mandate by publishing the list within sixty days would not be without at least some justification. Furthermore, the auditor's statement in the publication that the lands would be entered upon the foreclosure list, as provided by law, would lead to the conclusion that if the certification and publication was made prior to August 11, 1943, the effective date of House Bill No. 260, Section 5718, General Code, as then in force, would assure them of a three year delay and under the present statute a two year delay before foreclosure or forfeiture proceedings could be commenced. Such results obviously were never intended by the Legislature.

In specific answer to your inquiry it is my opinion that:

1. Under the provisions of House Bill No. 260 of the 95th General Assembly, the county auditor immediately after each August settlement should certify as delinquent all lands upon which the taxes and assessments, or either, together with penalties have not been paid for at least two consecutive semi-annual tax settlement periods preceding such August settlement. Such list should not include any lands which have been included in any previously published list.

2. Such lands as were certified delinquent and published as provided by Section 5704, General Code, prior to August 11, 1943 should not be submitted to the county board of revision for forfeiture as provided in Section 5718-1, General Code, nor certified to the prosecuting attorney for foreclosure proceedings as provided in Section 5718, General Code, until the expiration of three years after the certification provided for in Section 5704, General Code.

3. Such lands as are certified delinquent and published as provided in Section 5704, General Code, after August 11, 1943 should be submitted to the county board of revision for forfeitures as provided in Section 5718-1, General Code, and certified to the prosecuting attorney for foreclosure as provided in Section 5718, General Code, at the expiration of two years after the certification provided for in Section 5704, General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.