

“ \* \* public property used exclusively for a public purpose shall be exempt from taxation.”

There is little doubt but that when land is used for a public highway it is used for a public purpose. It is not so clear that where an easement is granted to the state for highway purposes the land becomes “public property”, within the meaning of Section 2, Article XII, of the Constitution. Section 5561, General Code, makes specific provision for the deduction in valuation where land is used as a public highway. Such section reads:

“The county auditor shall deduct from the value of such tracts of land, as provided in the next preceding section, lying outside of municipal corporations, the amount of land occupied and used by a canal or used as a public highway, at the time of such assessment.”

It is hardly probable that the legislative intent was to include highways within the meaning of Section 5351, General Code, for if such intent had existed no reason would have existed for the enactment of Section 5561, General Code, *supra*. It is never to be presumed that the legislature intended to enact a meaningless statute, and Section 5561, General Code, would clearly have been meaningless if land used for public highway purposes had been intended to be included within the meaning of Section 2, Article XII, or Section 5351, of the General Code.

It is thus apparent that the legislature had in mind that when an easement was given to the state, county, etc., for highway purposes, the principal value to such property passed to the public.

It is therefore my opinion that when a landowner has granted a perpetual easement over land outside of a municipality for public highway purposes the value of such land, when used and occupied as a public highway, by virtue of the provisions of Section 5561, General Code, must be deducted from the value of the grantor's land by the county auditor at the time he assesses the remaining property for taxation.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

4612.

DELINQUENT TAXES—INTEREST STARTS WHEN PLACED ON DELINQUENT LIST BY COUNTY AUDITOR—WHEN CERTIFIED FOR FORECLOSURE.

*SYLLABUS:*

1. *In compiling the new or first delinquent list under Section 5704, General Code, the items of taxes and assessments which have not been certified to the Auditor of State as delinquent, as provided under the former law, do not bear interest until they have been placed on “the list and duplicate thereof of all delinquent lands in his county” by the county auditor, even though such taxes have been delinquent since 1927.*
2. *Such items may not be certified for foreclosure under the provisions of*

*Section 5718, General Code, until after they shall have remained for three years on the list of delinquent lands of such county.*

COLUMBUS, OHIO, September 14, 1932.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads:

“Section 5704 of the General Code, prior to its amendment in 114 O. L., 831, provided for the publication of a list of delinquent land. Section 5712 of the General Code, provided for the certification of such land to the Auditor of State. Section 5713 of the General Code provides that the State shall have a first lien upon the premises certified for the amount of the taxes, assessments, penalties, together with interest thereon at the rate of eight per cent per annum from date of delinquency to date of redemption thereof. It was held that under these provisions, interest could only be charged where certification was made as provided under Section 5712. Section 5704 as amended in 114 O. L., 831, provides that a list shall be made up immediately after the August settlement, and that the first of such delinquent lists shall also contain all lands heretofore certified delinquent to the Auditor of State, and not redeemed, and that such list shall contain a 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, together with the amount of interest, if any, accrued thereon to the date of such August settlement.

QUESTION: In compiling the delinquent list under amended Section 5704, are the items of taxes and assessments which have not been certified to the Auditor of State under the old law, but which have been delinquent since 1927, subject to interest at the rate of eight per cent from the date of delinquency to the date of the August settlement, 1932?

QUESTION: May such items be certified for foreclosure in accordance with the provisions of amended Section 5718, notwithstanding the fact they have not been certified to the Auditor of State under the old law; or, must they remain on the delinquent list for a further period of three years before foreclosure can be made?”

It is universally held that all taxes are statutory and that the method of enforcement or collection thereof must be prescribed by statute otherwise the method does not exist. This rule is aptly stated in the first paragraph of the syllabus of the case of *Straub vs. Hilker*, 24 O. App., 90, as follows:

“All taxes are statutory, and method of collection and enforcement, being part of statute, must be followed.”

Bearing in mind this rule, the statutes must be examined in order to determine whether the legislature has provided that unpaid taxes shall bear interest. Section 5712, General Code, as it existed prior to the 89th General Assembly, authorized the charging of interest, in the following language:

"Interest at the rate of eight per cent. per annum shall be charged on the duplicate *against the delinquent lands*, city or town lots or parts of lots *certified by the county auditor on such certificate.*" (Italics, the writer's.)

The certificate mentioned in such quotation is the certificate delivered by the County Auditor to the State Auditor of all lands within his county upon which the taxes, assessments and penalties have not been paid "for two consecutive semi-annual tax-paying periods." (Former Sections 5705 and 5712, General Code.) An examination of the statutes as they then existed, fails to disclose any other authority for the charging of interest on unpaid items of real estate taxes. Section 5712, General Code, referred to above, was repealed by the 89th General Assembly (114 O. L., at page 842). Such General Assembly provided in Section 5704, General Code, that:

"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. The first of such delinquent land lists so to be made by the county auditor shall also contain all lands theretofore certified as delinquent to the auditor of state and not redeemed, or with respect to which an action to foreclose the tax lien thereon has not been filed. 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 penalty thereon due and unpaid, together with the amount of interest, if any, accrued thereon to the date of 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. Interest at the rate of eight per centum per annum on the total amount of taxes and assessments due and unpaid with respect to each tract or lot, or part of lot entered upon such delinquent tax list and duplicate shall be charged thereon from the date of such settlement. \* \*"

There is now no authority to make any charge of interest on real estate taxes except such as is contained in Section 5704, General Code, which is from the date of the settlement preceding such duplicate. By virtue of the language of such section, the county auditor is required to enter upon the list and duplicate *all* delinquent lands in his county upon which the taxes have not been paid for two consecutive semi-annual tax paying periods (Section 5705, General Code) whether theretofore certified to the Auditor of State as delinquent or not, and to include in the amount entered upon such list and duplicate a charge against the item of real estate, the penalty and interest which accrued under the former statute. In other words, under the new Section (5704, General Code) the county auditor prepares an entirely new list and duplicate of delinquent lands.

There being no authority for the assessment of interest charges on real estate taxes other than that which was contained in former Section 5712, General Code, and in the present Section 5704, General Code, I must answer your first inquiry in the negative.

Your second inquiry is in some respects similar to your first, in that a foreclosure action can not be instituted for the subjection of lands to the payment of taxes were it not for the provisions of statute. See *Straub vs. Hilker, supra, Caldwell vs. State*, 115 O. S., 458.

Former Section 5718, General Code, provided in substance that when at the expiration of four years after the taxes had been certified delinquent to the Auditor of State, (if in the meantime such lands had not been redeemed) the Auditor of State might cause foreclosure proceedings to be brought in the name of the County Treasurer, to subject such lands to the payment of the lien of such delinquent taxes, penalties, etc.

No authority is contained in this section or in the act of which it was a part, (popularly known as the "Boyle Act") to bring any foreclosure proceedings prior to the certification. The only provision that was contained in the General Code which would authorize a foreclosure prior to certification was contained in Section 2667, General Code, but this section has been amended so as to take away such right. The only authority now given by statute to bring a foreclosure proceeding to subject land to the payment of a tax lien thereon is contained in Sections 5712 et seq. General Code. Section 5717, General Code, specifically provides:

"No proceedings in foreclosure, under this chapter shall be instituted on delinquent lands, unless the taxes, assessments, penalties, and interest have not been paid for three consecutive years after such lands have been certified as delinquent."

I must therefore answer your second inquiry in the negative.

Specifically answering your inquiries it is my opinion that:

1. In compiling the new or first delinquent list under Section 5704, General Code, the items of taxes and assessments which have not been certified to the Auditor of State as delinquent as provided under the former law, do not bear interest until they have been placed on "the list and duplicate thereof of all delinquent lands in his county" by the county auditor, even though such taxes have been delinquent since 1927.

2. Such items may not be certified for foreclosure under the provisions of Section 5718, General Code, until after they shall have remained for three years on the list of delinquent lands of such county.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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4613.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN FRANKLIN  
COUNTY, OHIO.

COLUMBUS, OHIO, September 14, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*