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1. FORFEITED LANDS—SALARIES AND COST OF SUPPLIES—PROCEEDINGS, FORFEITURE AND SALE OF FORFEITED LANDS—NOT CHARGEABLE AND DEDUCTIBLE AS COSTS—SECTIONS 5744, 5771, 5773 G. C.
2. ANY COSTS, CHARGES OR EXPENSES INCURRED IN FORECLOSURE PROCEEDINGS CAN NOT BE CARRIED OVER AND CHARGED AS COSTS DEDUCTED UNDER SECTION 5771 G. C.
3. ONLY SUCH CHARGES AND EXPENSES AS ARE INCURRED UNDER PROCEEDINGS REQUIRED BY SECTIONS 5744 THROUGH 5773 G. C. AND NOT PAYABLE FROM OTHER SOURCES CAN BE CHARGED AND DEDUCTED AS COSTS.

SYLLABUS:

1. Salaries and cost of supplies incurred in connection with the proceedings pertaining to the forfeiture and sale of forfeited lands under the provisions of Sections 5744 to 5773 of the General Code are not chargeable and deductible as costs within the purview of Section 5771 of the General Code.
2. Any costs, charges or expenses incurred in connection with the foreclosure proceedings under the provisions of Sections 5704 to 5733, inclusive, of the General Code cannot be carried over and charged as costs and be deducted under the provisions of Section 5771 of the General Code.
3. Only such charges and expenses as are incurred under the proceedings required by Sections 5744 to 5773 of the General Code and not payable from other sources can be charged and be deducted as costs to the forfeiture and sale of forfeited lands within the purview of Section 5771 of the General Code.

Columbus, Ohio, January 24, 1950

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“Sections 5708, 5714, 5718, 5718-1, 5718-1a, 5718-4 and 5719-1, of the General Code, place mandatory duties upon the county auditor in connection with the sale of delinquent lands.

Section 577I, General Code, provides that the county auditor shall deduct all costs pertaining to the forfeiture and sale of forfeited lands, except those paid under Section 5704-3, General Code, from the moneys received from the sale of land and town lots forfeited to the state for non-payment of taxes, and shall pay such costs into the proper fund. The proceeds remaining after payment of such costs shall be distributed by the county auditor to the subdivisions entitled to participate therein.

QUESTION: Would the county auditor be authorized, under the provisions of Section 577I, General Code, to include as part of such costs, the expense of supplies and salaries of deputies and clerks required to prepare the records made necessary under the several sections of the General Code mentioned above; or would he only be authorized to consider as costs such items as legal advertising, court costs and certificate fees?

The attached statement is submitted for your consideration in connection with this question.

Your opinion on the question here submitted is respectfully requested."

You have also supplemented your letter with a statement of certain items to be considered in connection therewith which is also set forth:

<i>"COST OF DELINQUENT LAND SALE FOR 1948</i>	
<i>EXPENDED FOR</i>	<i>AMOUNT</i>
Advertising List for Common Pleas Court	} Two
Do	} Papers \$ 2,916.20
Advertising List of sale Dates	} Two
Do	} Papers 2,657.40
Salary 3-1-47 to 9-30-48	4,595.00
" 3-1-47 to 9-15-47	597.31
" 5-1-47 to 9-30-48	2,900.00
" 10-1-47 to 6-30-48	1,575.00
Notice of Delinquent sales	19.20
"	12.16
"	6.40
"	12.16
"	6.72
"	5.60
Supplies	75.00
"	19.30

Court Costs—Case #	394.60
Auditor's Certificate Fee	1,018.25
	\$22,203.90"

At the outset I wish to state that "costs" were unknown at common law, and means those expenditures incidental to the prosecution of an action or legal proceeding which are by law taxable in the proceeding, and is not synonymous with "expense" so that only such fees and costs as are provided for by statute can be charged or collected. (See *Albright v. Belmont County*, 10 O. Supp., 127.)

Section 5771 of the General Code of Ohio reads as follows:

"The county auditor shall deduct all costs pertaining to the forfeiture and sale of forfeited lands, except those paid under section 5704-3, from the moneys received from the sale of land and town lots forfeited to the state for the non-payment of taxes, and shall pay such costs into the proper fund. The proceeds remaining after payment of such costs shall be distributed by the county auditor to the subdivisions entitled to participate therein." (Emphasis added.)

In considering the problem before us we must not confuse proceedings under Sections 5704 to 5733 of the General Code, which pertain to delinquent lands, and proceedings under Sections 5744 to 5778 of the General Code, which pertain to forfeited lands.

The proceedings pertaining to sale of delinquent lands are foreclosure proceedings in the Common Pleas Court while proceedings for sale of forfeited lands are administrative after having been found forfeited by the court because of not being sold for want of bidders in the foreclosure proceedings.

Referring to the statement of specific items above set forth, we will first eliminate those items which clearly do not constitute *costs pertaining to the forfeiture and sale of forfeited land*. I will consider first the item: *Advertising lists for Common Pleas Court in two papers making a total expenditure of \$5932.40*. Since this is an expenditure in connection with foreclosures on delinquent lands under proceedings authorized by Sections 5704 to 5733, it is not a cost within the purview of Section 5771, and it is not deductible.

Coming to the items referring to salaries, which in no manner or sense are prescribed by statute as costs, to be assessed and deducted as costs pertaining to the forfeiture and sale of forfeited lands, the deduction of same is clearly illegal. Furthermore, such salaries are payable from the general fund by specific provisions of law.

The expense of notices of delinquent sales clearly comes within the proceedings prescribed in Sections 5704 to 5733 pertaining to delinquent lands and is payable *from the county treasury as county expenses are paid* (see Section 5704-3 of the General Code.) Therefore, by no interpretation can such expense be chargeable and deductible as costs pertaining to the forfeiture and sale of forfeited lands.

Since necessary supplies for the functioning of county offices in the carrying out of their prescribed duties are paid for from the general fund and no specific provisions are made for their expense to be assessed as cost, such expense likewise cannot legally be charged and deducted as costs within the intent of Section 5771, General Code.

Now, in order to determine what court costs are chargeable and deductible as pertaining to the forfeiture and sale of forfeited lands, we must determine when such court proceedings cease with reference to foreclosure under Chapter 14 and when they begin with reference to proceedings pertaining to forfeiture and sale of forfeited lands. Section 5744 of the General Code provides as follows:

“In addition to the land and town lots forfeited to the state as provided in section 5718-1c, every tract of land and town lot offered for sale in foreclosure proceedings, as provided in the next preceding chapter, and not sold for want of bidders shall also be forfeited to the state. Such forfeiture of lands and town lots offered for sale in foreclosure proceedings shall be effective when the court by entry shall order such lands and town lots forfeited to the state, which order shall be made only after representation by the prosecuting attorney that no further order of sale is to be issued. A copy of such entry shall be certified to the county auditor. Thenceforth all the right, title, claim and interest of the former owner or owners thereof shall be considered as transferred to, and vested in, the state, to be disposed of in compliance with all provisions of this chapter.”

It seems quite clear that this section sets forth and prescribes the first step to be taken pertaining to the forfeiture and sale of forfeited

lands. Everything up to the point where the journal entry ordering forfeiture to the State certainly was in connection with foreclosure proceedings and the cost thereof cannot be carried over as costs pertaining to forfeiture and sale of forfeited lands. Thus the only court costs chargeable are the costs pertaining to the journal entry and the certification of same to the county auditor.

With reference to my former statements about carrying the charges and costs pertaining to foreclosure over to costs under proceeding under Sections 5744 to 5773 pertaining to forfeited lands, see Attorney General's Opinion No. 899 for 1939. The syllabus of that opinion reads as follows:

"1. A county is liable for court costs in tax lien foreclosure proceedings where lands are not sold for want of bidders and are thereafter forfeited to the state as provided in section 5744, General Code. These costs may be paid from the county general fund except such portion as constitutes fees charged by county officials which section 2983, General Code, provides shall not be collected from the county by such officers.

2. When forfeited lands are sold at forfeited land sales, section 5757, General Code, provides that the proceeds are first to be applied to the payment of taxes, assessments, interest, penalties and costs of the forfeited land sales. The balance is to be retained by the county treasurers for the proper owners of the forfeited lands. Costs of prior foreclosure proceedings cannot be deducted therefrom, but the treasurers are required, upon demand, to pay such excess to the owners."

In all of which I concur.

The auditor's certificate to the purchaser as required by Section 5762 of the General Code is beyond any question chargeable as a cost in the proceedings pertaining to the forfeiture and sale of forfeited lands and should be deducted.

Now therefore in specific answer to your questions, on the basis of the above analysis and the clear and specific provisions of law, I am of the opinion that salaries, cost of supplies incurred in connection with the proceedings pertaining to the forfeiture and sale of forfeited lands under the provisions of Sections 5744 to 5773 of the General Code are not chargeable and deductible as costs within the purview of Section 5771 of the General Code.

I am also of the opinion that any costs, charges or expenses incurred in connection with the foreclosure proceedings under the provisions of Sections 5704 to 5733 of the General Code cannot be carried over and charged as costs and be deducted under the provisions of Section 5771 of the General Code.

I am also of the opinion that only such charges and expenses as are incurred under the proceedings required by Sections 5744 to 5773 of the General Code and not payable from other sources can be charged and be deducted as costs pertaining to the forfeiture and sale of forfeited lands within the purview of Section 5771 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.