

torney for the signer, its financial statement and its certificate of compliance with the laws of Ohio relating to surety companies, letter of Auditor of State submitting the necessary papers for his file, certificate of Secretary of State showing that the foreign corporation is qualified to do business in Ohio, emergency board approval, and the tabulation of bids received on this project.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other documents submitted in this connection.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3136.

COUNTY AUDITOR—LIST DELINQUENT LANDS—MANDATORY AFTER EACH AUGUST SETTLEMENT—TO MAKE AND CERTIFY—PUBLISH TWICE WITHIN SIXTY DAYS—SEE SECTION 5704 G. C.—AUGUST SETTLEMENT—WHEN MADE—LAND TAX CERTIFICATE—NO AUTHORITY TO INCLUDE CERTAIN DELINQUENT LANDS AND EXCLUDE OTHERS—MUST INCLUDE ALL.

SYLLABUS:

1. *It is mandatory upon the county auditor, immediately after each August settlement, to make and certify a list and duplicate thereof of all the delinquent lands in his county and 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, as provided by Section 5704, General Code.*

2. *The August settlement is made when it is approved by the auditor of state and the fact of approval certified back to the county treasurer.*

3. *When all things necessary to be done by the county auditor, relative to placing delinquent lands upon the foreclosure list, except the publication provided by law, have been done, if, after the August, 1938, settlement it is possible for the county auditor to publish same within the sixty days as provided by Section 5704, General Code, as to all delinquent lands regularly certified three or more years ago, such county auditor, after the legal publication, can legally make the land tax certificate required by Section 5718, General Code, and the prosecuting attorney of the county, upon the receipt of the original land tax certificate under such circumstances, would be warranted in law in proceeding to foreclose the*

state's lien for taxes, without waiting for three more years to elapse before proceeding therewith.

4. *The county auditor has no authority in law for including certain delinquent lands in the delinquent list and excluding others. He must include all the delinquent lands in his County, as provided by Section 5704, General Code.*

COLUMBUS, OHIO, October 25, 1938.

HON. NELSON CAMPBELL, *Prosecuting Attorney, Mount Gilcad, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date, with copy of your opinion to the County Auditor of your county enclosed. Your question is embraced in the following language:

"Enclosed is a copy of the opinion which I gave our County Auditor concerning advertisement of delinquent tax lands. In the last sentence of that opinion I stated: 'I shall proceed with the sale of such lands as are ready for sale in this county as soon as you have advertised such lands following the August, 1938, settlement.' It should be stated that all steps which were necessary to be taken up to the time the lands were certified to me were taken, except advertisement as provided by Section 5704 G. C.

Although I have informed the Auditor that I would proceed with foreclosure as stated above, I am wondering whether or not that statement is correct, or will it be necessary for me to wait three more years before proceeding with foreclosure?"

While the right of the state to levy and collect taxes for the purposes of government is inherent as an attribute of sovereignty, the taxpayer has some rights that the state must and does respect. I refer to the rights reserved to the people by the Constitutions, state and federal, under which the citizen and taxpayer has his existence.

Both Constitutions provide that no person shall be deprived of his property without due process of law. The General Assembly of Ohio had this provision in mind when it enacted our "tax collection statutes," and it undertook to, and as I take it did, accord to real estate owners "due process" in the matter of tax collection. When the owner of real estate is given reasonable notice that his land is delinquent and unless payment of same is made within a reasonable time statutory steps will be taken to subject his real estate to sale, and the right to pay and redeem is preserved to him up to the time of sale, he has been afforded all the benefits of due process. The reasonableness and sufficiency of notice has two

prime factors, notoriety and opportunity. The notice must be sufficiently notorious to advise the person to be affected by it and give an opportunity to pay his taxes and save his property.

The tax duplicates of the eighty-eight counties of Ohio are omnipresent and well-nigh omniscient. All that is necessary for the taxpayer to do to inform himself as to the status of his taxes is to drop into the county treasurer's office and inspect these duplicates. They are public records; no one can gainsay his rights so to do.

Notwithstanding this source of perpetual information, the General Assembly of Ohio has gone further and said in effect to the public officials who have to do with tax collections—you must follow strictly the statutory procedure provided for you when it becomes necessary for you to subject a taxpayer's land to sale in order to collect the taxes charged against it. The first step necessary to be taken in the collection of delinquent taxes is provided by Section 5704 of the General Code, 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. 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. * * *”

This section further provides that 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 as therein provided, within sixty days after such duplicate is delivered to the county treasurer. Let it be noted that this section deals with certification and publication. After all things necessary to be done to bring about the statutory certification has

been done, the next step is taken as provided by Section 5718, General Code, which reads:

“At the expiration of three years after certification, the county auditor shall make, in quadruplicate, 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, one copy with the county treasurer, and one copy sent to the auditor of state.”

I quote so much of Section 5718-3, General Code, as pertains to the duty of the prosecuting attorney upon receipt of the delinquent land tax certificate, viz:

“It shall be the duty of the prosecuting attorney of the county, upon the delivery to him by the county auditor of a delinquent land tax certificate, to institute a proceeding thereon in the name of the county treasurer to foreclose the lien of the state, in any court of competent jurisdiction within nine months thereafter unless the taxes, assessments, penalty, interest and charges are sooner paid, and to prosecute the same to final judgment and satisfaction. * * *”

I assume from your communication that your county auditor has made the certificate relative to the delinquent lands as shown by the August, 1938 settlement and as provided by Section 5704, General Code, but that he has not advertised same as therein provided.

While certification and publication are provided for by one and the same section, they mark two distinct steps that must be taken before the delinquent lands contained in the delinquent list and duplicate are ripe for foreclosure.

I again quote that part of Section 5704, General Code, relative to publication:

“It shall be mandatory upon the county auditor to cause a

list of the lands on such delinquent list and duplicate to be published twice, *within sixty days* after the delivery of the duplicate to the county treasurer, * * *."

A question arises relative to the limitation of sixty days contained therein. Does it mean that the two publications must be complete within sixty days after the delivery of the duplicate to the county treasurer, or is the provision complied with if the county auditor, within sixty days, "cause" or, in other words, starts the publication?

In the absence of mandatory language, a provision as to the time within which a ministerial officer shall perform a statutory duty, is regarded as directory rather than mandatory, unless time is of the essence of the act, but we have the mandatory words here and the safe course for the auditor to pursue is to complete his publication within sixty days of the date of delivery of the delinquent land list duplicate to the county treasurer. The word "immediately" in the first sentence of Section 5704, General Code, may give the county auditor some concern. I quote the sentence:

"Immediately after each August settlement, the county auditor shall make and certify a list and duplicate thereof * * *."

"Immediately" is a word of common, usual use and should be given its common, usual meaning, unless it is patent that a different meaning was intended by the legislators. It not being apparent that a different meaning was intended, it must be taken that "immediately" means "at once," "forthwith," "now." When the General Assembly uses a particular word, it uses it in the light of all the then existing law of the state.

Section 2596, General Code, provides in substance that on or before the fifteenth day of February and on or before the fifteenth day of September of each year, the county auditor shall attend at his office and make settlement with the county treasurer and ascertain the amount of real property, taxes, etc., with which the treasurer is to stand charged.

Section 269, General Code, provides in effect that the county auditor shall forward an abstract of the semi-annual settlements to the auditor of state, who approves or disapproves same and certifies such approval or disapproval back to the county treasurer.

It is a matter of universal practice that the semi-annual settlement between the county auditor and county treasurer is not regarded as a settlement until it is in fact settled by the auditor of state and official notice thereof is received by the county treasurer; hence I would take it that the word "immediately" then becomes applicable.

It should be remembered that the duplicate provided for in Section 5704, General Code, is a special duplicate based upon the August settlement required as a matter of law to be made on or before September fifteenth of each year.

Answering your question specifically, I am of the opinion, all other statutory requirements having been fully complied with, that if it is still possible for your county auditor to advertise the delinquent lands returned by the August, 1938 settlement within sixty days after the approval of such settlement by the auditor of state has been received by the county treasurer as to all lands certified three or more years ago, your county auditor can proceed to make his land tax certificate in quadruplicate as required by Section 5718, General Code, and upon receipt of the original, as therein provided, you can forthwith institute proceedings to foreclose the state's tax lien.

You submitted another question on your visit to this office, namely, "Can the county auditor certify such lands as he sees fit to certify, or must he certify all delinquent lands?"

He must certify all. The law plays no favorites, neither does it permit its ministerial officers to indulge such practice. The language employed in these "tax Collection sections" of the statutes leaves no room for doubt along this line.

Section 5704, *supra*, provides specifically that the "county auditor shall make and certify a list and duplicate thereof of *all the delinquent lands* in the county."

It further provides that "interest at the rate of eight per cent 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."

The contention that a county auditor has the right to include in the delinquent tax list and duplicate such land owners as he sees fit and exclude others is both farcical and fallacious.

Respectfully,

HERBERT S. DUFFY,
Attorney General.