

For like reasons (though the commission does not ask this question), it is impossible at the present time to apply the highest possible rate section to the valuation of the contingent remainders.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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3374.

**DELINQUENT REAL ESTATE—MAY BE OFFERED FOR SALE WITHOUT APPRAISEMENT AND WITHOUT ANY EXEMPTIONS—SHERIFF AUTHORIZED TO ACCEPT ANY BID THOUGH AMOUNT NOT SUFFICIENT TO PAY TAXES, ETC.—WHETHER COURT MAY SET ASIDE OR REFUSE TO CONFIRM SALE NOT DECIDED—WHERE AMOUNT INSUFFICIENT TO PAY COSTS, ETC.—HOW APPLIED.**

1. *Land sold in foreclosure proceedings for the enforcement of the lien for delinquent taxes and penalties under sections 5718 and 5719 of the General Code may be offered for sale for what it will bring without any appraisal and without any exemptions. The sheriff is authorized to accept any bid that is made, though the amount thereof may not be sufficient to pay the judgment for taxes, penalties and interest and the costs of the proceedings. Whether the court may set aside or refuse to confirm a sale under these circumstances is not decided.*

2. *If in such proceedings a sale is made or confirmed for an amount insufficient, to pay the costs and the judgment for taxes, penalties and interest, the costs constitute the first charge against the fund, after which the balance is to be applied on the claim for taxes, penalties and interest. Whether such proceedings discharge the state's claim for taxes, penalties and interest, or whether a personal liability still exists for the balance, and if so, how it may be enforced, are questions which are not decided.*

COLUMBUS, OHIO, July 21, 1922.

HON. LAWRENCE H. WEBBER, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—You have requested the opinion of this department on the following questions:

“What constitutes a legal bid for land sold for delinquent taxes under section 5719 of the General Code?”

Two-thirds of the appraised value of course is the least the sheriff can sell land on execution. Section 5718 provides that the sheriff shall sell this land ‘in the manner provided by law for the sale of real estate on execution.’ As section 5719 provides that there shall be no appraisal, what is the least amount the sheriff can accept when this land is put up for public sale?”

Section 5718 of the General Code provides that the prayer of the petition in a suit brought to foreclose the lien of the state under an unredeemed land tax certificate shall in part be “that the court make an order that said property be sold by the sheriff of the county in the manner provided by law for the sale of real estate on execution.”

Section 5719 of the General Code provides in part as follows:

“Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty, interest and

costs, for the payment of which, the court shall order such premises to be sold without appraisement. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes, assessments, penalties and interest and the balance shall be distributed according to law. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action." \* \* \*

The following sections relate to the sale of real estate on execution:

"Sec. 11664. \* \* \* If the court rendering the judgment or decree so orders, real estate may be sold under execution as follows: one-third cash on the day of sale, one-third in one year, one-third in two years thereafter, with interest in deferred payments, to be secured by mortgage on the premises so sold. \* \* \* The exact amount of the debt, damages and costs, for which the judgment is entered, shall be indorsed on the execution."

"Sec. 11672. When execution is levied upon lands and tenements, the officer who makes the levy shall call an inquest of three disinterested freeholders, residents of the county where the lands taken in execution are situated, and administer to them an oath impartially to appraise the property so levied upon, upon actual view. They forthwith shall return to such officer, under their hands, an estimate of the real value of the property in money."

"Sec. 11673. When the officer receives such return he forthwith shall deposit a copy of it with the clerk of the court from which the writ issued, and immediately advertise and sell such real estate, agreeably to the provisions of this chapter."

"Sec. 11675. No tract of land shall be sold for less than two-thirds of the value returned in the inquest; except that in all cases where a junior mortgage or other junior lien is sought to be enforced against real estate by an order, judgment or decree of court, subject to a prior lien or liens thereon, and such prior lien or liens, and the claims or obligations secured thereby, are unaffected by such order, judgment or decree, the court making such order, judgment or decree, may determine the minimum amount for which such real estate may be sold, such minimum amount, however, to be not less than two-thirds of the difference between the value of the real estate appraised as provided in section eleven thousand, six hundred and seventy-two, and the amount remaining unpaid on the claims or obligations secured by such prior lien or liens."

Section 11677 makes the following significant provision:

"Nothing in the foregoing provisions shall affect the sale of lands by the state. All lands, the property of individuals, indebted to the state for debts, taxes, or in any other manner, except for loans heretofore authorized by the legislature, shall be sold without valuation, for the discharge of such debt or taxes, agreeably to the laws in such case made and provided."

"Sec. 11681. Lands and tenements taken in execution shall not be sold until the officer causes public notice to be given of the time and place of sale, for at least thirty days before the day of sale, by advertisement in a newspaper printed and of general circulation in the county."

"Sec. 11696. Sales of lands or tenements under execution or order of sale must be held in the county in which they are situated and at the court house, unless otherwise ordered by the court. Purchase of real or personal property, by the officer making the sale thereof, or by an appraiser of such property, shall be fraudulent and void."

Section 11730 of the General Code need not be quoted in full. It provides for a homestead exemption in certain cases, and is followed by other provisions of the same character providing for allowance in lieu of homestead. By virtue of sections 5718 and 5719 read together, it becomes apparent that while the property against which the lien is to be foreclosed is to be sold generally in the manner provided by law for the sale of real estate on execution, all the provisions relating to the sale of real estate on execution are not to apply, for there is to be no appraisal, nor are there to be any exemptions. So far as the appraisal is concerned, it would seem that the provisions of section 11677 would themselves negative the necessity for any such procedure. It is very clear, however, both from the sections dealing with the special action themselves and from the sections dealing generally with sales of real estate on execution, that in cases under sections 5718 and 5719 of the General Code there is to be no appraisal.

No statutory provision has been found imposing any limitation whatsoever upon the amount that the sheriff may accept when land is put up for public sale under sections 5718 and 5719, for section 11675 imposes a limitation based upon the appraised value, and does not authorize the court to determine the minimum amount for which real estate may be sold, except when the same is to be subject to prior liens unaffected by the judgment, and even then the limitation to be fixed by the court is to be in part based upon the appraised value.

So far as the sheriff is concerned then, he is authorized to accept any amount that is bid. Whether the court on the return of the execution and motion for confirmation or otherwise, may set aside a sale or refuse to confirm it because of the insufficiency of the bid, is a question which you do not ask, and which is therefore reserved for further consideration, but the sections bearing upon the same have been quoted herein.

In order to cover other questions which have come to this department, it may also be stated that in the event the land does not sell at public auction for the full amount of delinquent taxes, penalties and interest and the sale is confirmed, section 5719 seems to contain full provision for such a case when it prescribes that the costs shall be first paid and next the judgment for taxes, penalties and interest. In other words, the costs constitute the first charge against the fund derived from the sale of the land. The balance of the fund in such a case would be applied on the claim for taxes, penalties and interest. Whether a claim for taxes, penalties and interest to the extent that it is unsatisfied by the sale, still subsists as a personal obligation of the taxpayer, against whom it subsists if at all, and whether any personal judgment can be entered in a case brought under section 5718 for the deficiency, if any, or execution awarded upon the finding of the amount due after failure to satisfy from the sale of the real estate, are questions which are not presented in any of the communications which have come to this department, and which are reserved for future consideration.

The points to which this opinion is limited are as follows:

(1) Land sold in foreclosure proceedings for the enforcement of the lien for delinquent taxes and penalties under sections 5718 and 5719 of the General Code may be offered for sale for what it will bring without any appraisal and without any exemptions. The sheriff is authorized to accept any bid that is made, though the amount thereof may not be sufficient to pay the judgment for taxes, penalties and interest and the costs of the proceeding. Whether the court may set aside or refuse to confirm a sale under these circumstances is not decided.

(2) If in such proceedings a sale is made or confirmed for an amount insufficient to pay the costs and the judgment for taxes, penalties and interest, the costs consti-

tute the first charge against the fund, after which the balance is to be applied on the claim for taxes, penalties and interest. Whether such proceedings discharge the state's claim for taxes, penalties and interest, or whether a personal liability still exists for the balance, and if so, how it may be enforced, are questions which are not decided.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3375.

CORPORATIONS—EXCESSIVE VALUATION OF PERSONAL PROPERTY BY CORPORATION OR COUNTY AUDITOR—RECEIVER APPOINTED FOR COMPANY—HOW VALUATION CHANGED—AUTHORITY OF BOARD OF REVISION.

*Where a corporation makes an excessive return of its property for taxation, or on the basis of a return made by such a corporation, the county auditor makes an excessive valuation of the personal property of the corporation, and subsequently after the assessment has been made and entered on the tax list and duplicate, a receiver is appointed for the company, who is able to show that the valuation is excessive, the county auditor is without authority under sections 5406, 2588, 2588-1 and 2589 or any other section of the General Code, to change the valuation as it appears on the duplicate. The remedy of the receiver is to apply to the board of revision under section 5609 of the General Code.*

COLUMBUS, OHIO, July 21, 1922.

HON. JOHN R. KING, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—You have requested the opinion of this department on the following questions:

“The M. Company, a manufacturing concern for the year 1921 returned for taxation property valued at \$206,210. Although this return was under the oath of the officers of said company, it was apparently excessive and prior to the last day for the payment of taxes for the first half of the year 1921, a receiver was appointed for the company, who thereupon filed a written verified application with the county auditor asking for a reduction in the amount for which the company was assessed for taxation. All the property so returned was personal and consisted of raw materials on hand, together with tools, machinery, etc. On April 24, 1922, the county auditor reduced said valuation to \$155,920.

The C. Company, a manufacturing concern, filed a return, supported by the affidavit of its officers, showing raw materials, tools, furniture, etc., on hand of a valuation of \$66,710. The county auditor later increased this return to \$136,120. Receivers were appointed for the company, who prior to the last day for the payment of taxes for the first half of the year 1921, filed an application for correction, and the auditor thereafter reduced said valuation to \$87,050.

The question presented in each case is the authority of the auditor to reduce such valuations.”

Attached to your letter is a memorandum in behalf of the county auditor. You