

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said village.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

439.

DELINQUENT TAXES, LIEN OF STATE ATTACHES, WHEN—
DELINQUENT LIST—CERTIFICATION BY COUNTY AUDI-
TOR, WHEN—FORECLOSURE OF TAX LIEN, WHEN—
PUBLICATION MANDATORY.

SYLLABUS:

1. *The lien of the state for delinquent taxes attaches at the time of the August settlement next preceding the certification of the delinquent list by the county auditor to the county treasurer as provided by Section 5704, General Code.*
2. *The county auditor has no authority to make and deliver delinquent land certificates to the prosecuting attorney until after the expiration of three years after such certification. Section 5718, General Code.*
3. *Such certificate is a badge of authority to the prosecuting attorney to institute proceedings to foreclose the lien for delinquent taxes and without which he cannot proceed. After receipt of such certificate he should proceed within nine months to foreclose the lien, as provided by Section 5718-3, General Code.*
4. *The publication of the delinquent list is made mandatory by force of Section 5704, General Code, and must be strictly followed.*

COLUMBUS, OHIO, April 12, 1937.

HON. LESTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows:

“It is now mandatory by Section 5704 (Eff. Oct. 26, 1936) upon the county auditor to twice publish the delinquent land list within sixty days after delivery of the duplicate to the county treasurer, after having first published two display notices of the forthcoming delinquent land list publications. Formerly,

Section 5704 provided that the omission or failure of the county auditor to publish said lists did not invalidate any foreclosure proceedings for delinquent taxes, the direction to publish being considered directory and not mandatory.

In our county the auditor proceeded under the former Section 5704 after the August settlement in 1936 and did not cause the delinquent land lists and duplicate to be published, as the new section was not in effect at that time.

The question is: Would foreclosure proceedings, if instituted, at the present time on delinquent land tax certificates, be valid in view of the fact that no publication of the lists has been made, or should such proceedings be delayed until due publication has been made subsequent to the August settlement of 1937?

We await your answer before instituting any foreclosure proceedings and thank you in advance for a timely response."

Section 5704, General Code, in different forms, has been in effect for many years and it was not until 1931 that the saving clause relative to the failure to publish the delinquent land list was included within its terms. (114 O. L. 832). I quote the saving clause:

"Such publication shall be considered to be for the information of the public, and the omission of such publication shall not in any respect affect the validity of the delinquent land list and duplicate, nor of any charge made then or thereafter thereon, nor any foreclosure proceedings thereon or other remedies provided in this or the succeeding chapter for the collection of taxes, assessments, penalties and interest shown thereon together with costs and other charges, nor the enforcement of the state's lien therefor."

This provision remained in the section until October 26, 1936, (116 O. L. Pt. II, 466), when the amended section became effective. The amended section not only omitted the saving clause above quoted, but provided in part as follows:

"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 * * *."

The General Assembly has the power and right to characterize a statute as mandatory and when it does so provide, nothing is left for judicial speculation along that line.

You do not state when the auditor delivered the delinquent list to the treasurer and of course, in the absence of such information, I am unable to say whether or not the sixty days in question expired prior to October 26, 1936, the effective date of Amended Section 5704, General Code. I do know from your communication that these delinquencies were returned at the August settlement in 1936 and I am at a loss to know how you can even maintain an action to foreclose such tax liens, even at this time in the face of Section 5717, General Code, in effect in 1936, which provides:

“No proceedings 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.”

The prosecuting attorney upon whom devolves the duty of bringing the action to foreclose has no subject matter to work on until the county auditor furnishes him the certificate provided for in Section 5718, General Code, which the auditor is not authorized to make until the expiration of three years after the delinquent list has been certified by the county auditor to the county treasurer. Upon receipt of the delinquency certificate, the prosecutor is required by Section 5718-3, General Code, to institute proceedings to foreclose the tax lien within nine months thereafter. This may not be a mandatory statute. It may not, when tested, be construed as a limitation, but the only safe course for the prosecutor to pursue is to regard it as both.

It will be necessary for you to wait the statutory length of time before instituting your action to foreclose and you must follow Section 5704, General Code, strictly.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

440.

STATE BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS AND SURVEYORS — APPROPRIATION — REPEALED BY HOUSE BILL No. 33.

SYLLABUS:

Appropriation of moneys for the uses and purposes of the State Board of Registration for Professional Engineers and Surveyors con-