

473.

TAX FORECLOSURE—EXCESS FUNDS—DUTY OF COUNTY
TREASURER.

SYLLABUS:

When, upon sale of lands on foreclosure of tax lien as provided in Section 5718-3, General Code, an excess remains in the hands of the county treasurer after satisfying all charges against the land, he is responsible for the proper distribution of such excess and as a matter of safety should follow the provisions of Section 5719-1, General Code.

COLUMBUS, OHIO, April 16, 1937.

HON. HAROLD J. ROSE, *Prosecuting Attorney, Athens County, Athens, Ohio.*

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

"I would like to have your opinion upon the following:

In pursuance to General Code Section 5718-3 et seq. when a tax action to sell delinquent lands has been commenced by the County Treasurer against the heirs of a deceased person in whose name lands are charged on the tax duplicate and upon the sale of these lands there remains in the hands of the Sheriff a surplus in excess of the amount of taxes, assessments, penalties, interest, charges sued on and Court costs:

FIRST: Is it the duty and responsibility of the Treasurer, as a part of the action, to see that this surplus fund remaining on the order of distribution is correctly distributed to the owner or owners of the lands so sold.

SECOND: Should the Court on application of the Treasurer in pursuance to General Code, Section 5719-1 order the fund paid into the County Treasury to await the demand of the proper owner or owners.

If this is the proper procedure what should the Treasurer do to protect himself if there is doubt as to who the proper owner or owners are and what their proportionate shares of this surplus fund are."

Section 5719-1, General Code, provides as follows:

"Any residue of moneys from the sale or foreclosure of such lands, remaining to the owner thereof on the order of

distribution and unclaimed by such owner within sixty days from the receipt thereof shall be paid into the county treasury and shall be charged to the county treasurer by the county auditor separately in each case in the name of the supposed owner. The treasurer shall retain such excess in the treasury for the proper owner of such lands upon which the foreclosure was had, and upon demand by such owner from the date of *receipts* shall pay such excess to him."

I am of the opinion that the word "receipts" is a typographical error in that the plural is used instead of the singular and such use injures the sense of the section. The county treasurer in addition to being made the custodian or trustee of such fund is the party plaintiff to the suit to foreclose the tax lien. See Section 5718-3, General Code. The treasurer is responsible for the distribution of the excess proceeds of sale, but he is under no statutory duty to make the distribution forthwith upon sale, unless he wants to assume the risk of so doing. It is not always an easy matter to determine just who are and who are not the proper distributees immediately upon sale. The General Assembly sensed this difficulty and enacted Section 5719-1, General Code, to take care of the situation, and the only safe course is for the treasurer to follow this section.

The treasurer has a perfect right to require distributees to establish their claim before making payment and this he can do by following Section 5719-1, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

474.

TAX FORECLOSURE—ALIAS ORDER OF SALE.

SYLLABUS:

When land has been offered for sale in foreclosure proceedings under virtue of Sections 5718-3, et seq., General Code, and is not sold for want of bidders, it does not so instanti pass to the State as forfeited land, but it may be again offered for sale upon an alias order of sale, if there is reasonable ground for believing that upon reoffer such land will sell for enough to satisfy the lien of the State thereon for unpaid taxes. First