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LANDOWNER OR LIENHOLDER—FORECLOSURE PROCEEDINGS—PRIOR TO DATE OF SALE SUCH OWNER MAY TAKE ADVANTAGE OF AMENDED SENATE BILL 3, 93rd GENERAL ASSEMBLY — PROCEDURE: PAY COSTS, TAXES, ASSESSMENTS, PENALTIES, INTEREST AND OTHER CHARGES—OR—ENTER INTO SPECIAL UNDERTAKING—SEE SECTIONS 2 AND 3 OF SAID ACT—SEE OPINION 902 JULY 20, 1939.

SYLLABUS:

A landowner or lienholder may take advantage of Amended Senate Bill No. 3 of the 93rd General Assembly, after foreclosure proceedings have been instituted against such lands, at any time prior to the date of sale, by paying the costs incurred in the foreclosure proceedings and either paying the taxes, assessments, penalties, interest and other charges, as provided in section 2 of the Act, or entering into the undertaking provided for in section 3 of the Act.

COLUMBUS, OHIO, July 18, 1939.

HON. ROBERT U. HASTINGS, *Prosecuting Attorney, Lancaster, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent request for my opinion, which reads as follows:

> "March 25, 1937, when the Whittemore Act was in effect, the Attorney General rendered an opinion, No. 310, the second syllabus of which reads as follows: 'A landowner or lienholder cannot take advantage of Sections 1 and 2 of the Whittemore Act after the lands in question have been entered on the foreclosure list.'
>
> The aforesaid act is not now in effect, but Amended Senate Bill No. 3 has been passed and is in force and is of like nature and almost identical in context. Please give me your opinion on the following question so I can properly advise our County Treasurer:
>
> Can a londowner or lienholder, whose lands have been certified to the prosecuting attorney for foreclosure, take advantage of any of the provisions of Amended Senate Bill No. 3?"

When "taxes, assessments and penalties, or either, remain unpaid at two consecutive semi-annual settlement periods," the lands so taxed and assessed are defined in section 5705, General Code, as delinquent lands. Immediately after the next August settlement, such delinquent lands are

certified and published, as provided in section 5704, General Code. If taxes, assessments, penalties and interest are not paid in the next three consecutive years after such certification, sections 5717 and 5718, General Code, provide that foreclosure proceedings may thereafter be instituted. Before the certification of such lands to the county prosecutor for foreclosure, section 5718-1, General Code, requires a separation from the delinquent land list of such lands as will not bring upon sale a sufficient amount of money to pay the taxes, assessments and penalties thereon, in areas, with costs of foreclosure. These lands are forfeited as provided in section 5718-3, General Code. The remainder of the lands on the delinquent list are then certified in quadruplicate and thereafter constitute the foreclosure list as provided in section 5718, General Code.

Discussing the construction of taxing statutes in the opinion in the case of Watson v. Tax Com., 135 O. S. 377, Matthias, J., said:

> "A strict construction is required, and any doubt must be resolved in favor of the citizen upon whom or the property upon which the burden is sought to be imposed."

Strictly speaking, the Whittemore Act is not a taxing statute but rather an exemption statute. However, the tendency of the Supreme Court to favor the taxpayer is clearly indicated where the construction of the statute is doubtful. Following the principles laid down in the case of Watson v. Tax. Com., supra, and other similar decisions, I believe that any doubt as to the construction of the Whittemore Act should be resolved in favor of the taxpayer.

The 1937 opinion, No. 310 (Opinions of the Attorney General, 1937, Vol. I, page 500), to which you refer in your letter, makes reference to forfeited lands and is not applicable to tax lien foreclosures, but Opinion No. 332, (Opinions of the Attorney General, 1937, Vol. I, page 575), based upon the same reasoning and wording of the Whittemore Act, is squarely in point, the second branch of the syllabus reading:

> "A landowner or lienholder cannot take advantage of Sections 1 and 2 of the Whittemore Act after the lands in question have been entered on the foreclosure list."

Since the 1937 opinions of my predecessor, above referred to, were written, the 93rd General Assembly has reenacted the Whittemore Act as Amended Senate Bill No. 3. Section 3 of the act, in so far as pertinent to your question, retains the same wording as in the former act. In discussing this section, my predecessor, in Opinion No. 332, at page 576, said:

> "A landowner cannot take advantage of the Whittemore Act after foreclosure proceedings have been instituted, as the last

> sentence of Section 3 of the Act specifically provides that when the payment provided for in Section 1 of the Act, has been made and when the undertaking provided for in Section 2 of the Act has been entered into, *such lands shall not be entered on the foreclosure list.* No provision is made for taking lands out of the list and I must conclude that if a landowner or lienholder desires to take advantage of the Whittemore Act, he must act before the lands have been entered on the foreclosure list."

I am inclined to agree with his conclusion, at least as to its application to Section 3 of the Act, that is, the owner of such real property or the holder of a lien thereon may not have an abatement of penalties, interest and other charges for the year 1936 and prior thereto, after such lands have been entered on the foreclosure list, by simply entering into a written undertaking "in such form as shall be prescribed by the bureau of inspection and supervision of public offices, to pay the full principal amount of such taxes and assessments, so delinquent, less penalties, interest and other charges for the year 1936 and prior thereto, and plus penalties, interest and other charges for the year 1937 and years subsequent thereto, in ten annual installments payable at the time prescribed by law for the payment of the second half of current real property taxes and assessments, with interest at the rate of four per centum per annum, payable annually, from the date of the written undertaking."

It should be noted, however, that Amended Senate Bill No. 3 includes certain provisions not contained in the former Whittemore Acts, particularly the last paragraph of section 15 which, I believe, is pertinent to your inquiry and which is quoted as follows:

> "Nothing in this act shall affect the right of the prosecuting attorney to institute and complete proceedings to foreclose the lien of the state under sections 5718-3 and 5719 of the General Code of Ohio, nor the jurisdiction and power of the common pleas court under said sections of the General Code unless prior to the date of sale, the costs incurred in foreclosure proceedings shall have been paid and an undertaking shall have been entered into pursuant to this act, covering the payment of such delinquent taxes and assessments."

By reading this section in pari materia with other sections of the Act, and particularly with sections 2 and 3, it appears that the Legislature has intended to extend the benefits of the Act to owners and lienholders even after the lands have been enterd on the foreclosure list at any time prior to the date of sale, but in addition to the requirements set forth in sec-

tions 2 and 3, the owners and lienholders seeking to take advantage of the Act, after lands have been entered on the foreclosure list, must pay the costs incurred in the foreclosure proceedings.

In conclusion and specifically answering your request, it is my opinion that a landowner or lienholder may take advantage of Amended Senate Bill No. 3 of the 93rd General Assembly, after foreclosure proceedings have been instituted against such lands, at any time prior to the date of sale, by paying the costs incurred in the foreclosure proceedings and either paying the taxes, assessments, penalties, interest and other charges, as provided in section 2 of the Act, or entering into the undertaking provided for in section 3 of the Act.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

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LEASE—OFFICE SPACE, STATE WITH THE UNITED BUILDING OF AKRON, OHIO, ROOMS 805 TO 809, UNITED BUILDING, AKRON, USE, INDUSTRIAL COMMISSION OF OHIO.

COLUMBUS, OHIO, July 19, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease executed by The United Building of Akron, Ohio, in and by which there are leased and demised to the State of Ohio, acting through you as Director of the Department of Public Works, certain premises for the use of the Industrial Commission of Ohio.

By this lease, which is one for a term of eighteen months commencing on the 1st day of July, 1939, and ending on the 31st day of December, 1940, and which provides for an annual rental of $2700.00, payable in monthly installments of $225.00 each, there are leased and demised to the State for the use of the Industrial Commission Rooms Nos. 805-806-807-808-809 of the United Building, located on Lots Nos. King Blk. 6—lot 1, all; King Blk. 6—lot 28-1-½ ft. situated in the City of Akron, Ohio.

This lease has been properly executed by The United Building of Akron, Inc., the lessor, by the hand of one Theodore D. Helmkamp, Vice-President, by authority of the resolutions of the Board of Directors. I likewise find that this lease and the provisions thereof are in proper legal form.

This lease is accompanied by contract encumbrance record No. 109 which has been executed in proper form and which shows that there are