

Blosser has a good and indefeasible fee simple title to the above described tracts of land free and clear of all encumbrances except the taxes for the year 1929, which are unpaid and a lien. Some adjustment with respect to these taxes should be made before the matter relating to the transaction of this property is closed. In this connection it is noted that the warranty deed tendered by said Lester P. Blosser warrants and defends the above described property against all claim or claims of all persons whomsoever, "except all taxes and assessments hereafter falling due." This deed was executed by Lester P. Blosser on October 5, 1929, and indicates that there might be some understanding by and between your department and the grantor with respect to this matter.

An examination of the warranty deed tendered by said Lester P. Blosser shows that the same has been signed, and otherwise properly executed and acknowledged by him. The deed recites that he is unmarried and for this reason the deed is executed by him alone.

Encumbrance estimate No. 5838 which has been tendered as a part of the rules relating to the proposed purchase of this property shows that there are sufficient balances in the proper appropriation account to pay the purchase price of this property. Said encumbrance estimate further recites that the money for the purchase of this property has been duly released for the purpose by the controlling board.

I am therefore returning with my approval, said abstract of title and other files above mentioned, relating to the purchase of the above described property.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1368.

DELINQUENT TAXES—FORECLOSURE PROCEEDINGS—WHAT TAXES ABATED.

SYLLABUS:

In foreclosure proceedings under the provisions of Sections 5718 and 5719, General Code, only the taxes which were included in the delinquent land tax certificate are abated, and the taxes and assessments accruing subsequently to the delivery of said certificate are not abated in said foreclosure proceedings, but remain a lien upon the land, unless the same are paid from the proceeds of the sale.

Opinion No. 1814, rendered March 5, 1928, approved and followed.

COLUMBUS, OHIO, January 6, 1930.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

"Under date of March 5, 1928, Opinion No. 1814, the Attorney General held that 'in foreclosure proceedings under the proceedings under the provisions of Sections 5718 and 5719, General Code, only the taxes which were included in the delinquent land tax certificates are abated, and the taxes and assessments accruing subsequently to the delivery of said certificate are not abated in said foreclosure proceedings, but remain a lien upon the land, unless the same are paid from the proceeds of the sale.'"

In connection with this matter, I discovered Section 5692 of the General

Code, part of which reads as follows: 'when-----real estate is sold at judicial sale-----the court shall order taxes and penalties and interest thereon against such lands to be discharged out of the proceeds of such sale.'

In the opinion above cited, this section was not referred to, and in view of the provisions of 5692, it would seem to me that all taxes would be wiped out, whether occurring prior or subsequent to the delivery of the land tax certificate, up to the date of sale.

This matter is constantly occurring in our tax foreclosures and I would appreciate very much your advice as to whether you are holding in accordance with Opinion 1814 heretofore rendered by your office."

Section 5718, General Code, to which you refer, as enacted in 1917, 107 O. L. 735, provides among other things, that the petition shall set forth the amount of money which is due and unpaid and which is a lien against the property. Said section further provides that the petition shall pray "that the court make an order that such 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, General Code, also enacted in 1917, 107 O. L. 735, provides that judgment shall be rendered for the taxes and assessments as are found due and unpaid, and for the penalty, interest and costs. Said section further provides that:

"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."

As stated in your communication, the opinion of my immediate predecessor, to which you refer, held that the taxes that were included in the delinquent land tax certificate are abated and not the taxes which accrue between the issuance of said certificate and the date of sale. The subject of the judgment of foreclosure is the amount stated in the petition, and is the amount which has been certified as delinquent. There is no question but that my predecessor was correct in so far as the provisions of the section which he had under consideration are concerned. You however refer to Section 5692, General Code, as enacted in 1859, 56 O. L. 175, which provides:

"When land so held by tenants in common are sold upon proceedings in partition, or taken by the election of any of the parties to such proceedings, or real estate is sold at judicial sale, or by administrators, executors, guardians, or trustees, the court shall order the taxes and penalties, and the interest thereon against such lands, to be discharged out of the proceeds of such sale or election."

The section last quoted contains an expression relative to the fact that when real estate is sold at judicial sale the court shall order the taxes and penalties discharged out of the proceeds. In my view, there is no inconsistency between the provisions of this section and Sections 5718 and 5719, General Code. In the event property is sold as provided in Sections 5718 and 5719, General Code, for an amount in excess of the amount certified as delinquent, such excess should be applied toward the payment of any taxes and assessments in accordance with the provisions of Section 5692, *supra*. On the other hand, if property is sold as provided in Sections 5718 and 5719 for an amount insufficient to cover the amount certified as delinquent, such other taxes and assessments as may have become due subsequent to such certification would still be a lien against the property.

It further may be mentioned in this connection that in the cases of *Haglen vs.*

Cohen, 30 O. S. 436, and *Markley vs. Whitmore*, 61 O. S. 587, in construing a similar provision to that contained in Section 5692, *supra*, it was held that only the taxes and assessments which were due and payable on the day of the judicial sale might be discharged from the proceeds thereof, notwithstanding there may be taxes which are a lien upon said premises, by virtue of the provisions of Section 5671, General Code, which fixes the date upon which the lien for real estate attaches.

In specific answer to your inquiry, I concur in the conclusions of my predecessor, notwithstanding the provisions of Section 5692, General Code, to which you refer.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1369.

BOND ISSUE—AUTHORIZED BY SCHOOL DISTRICT ELECTORS IN 1925
—PORTION NOT ISSUED BEFORE UNIFORM BOND ACT EF-
FECTIVE, NOW ISSUABLE—MATURITIES.

SYLLABUS:

1. *When the electors of a school district authorized the issuance of bonds in the amount of \$800,000 in the year 1925 in accordance with the laws as then in force and effect, and \$320,000 bonds have already been issued pursuant to such authorization, the remaining bonds authorized in the amount of \$480,000 may now be issued pursuant to the provisions of Sections 2293-25 to 2293-29 inclusive, of the General Code, for the purpose authorized by the electors.*

2. *The maturities of such bonds should be in accordance with the provisions of Sections 2295-7, 2295-9, 2295-10 and 2295-12, General Code, as in force and effect in September, 1925.*

COLUMBUS, OHIO, January 6, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“We are enclosing herewith a transcript of the proceedings of the board of education of the C. City School District in the matter of an issue of \$800,000 of bonds. You will note that in the resolution submitting the question to a vote of the people the maturity of the bonds covering the entire \$800,000 was fixed. You will also note that in pursuance of a favorable vote an issue of \$320,000 was made under this vote with maturities which correspond practically with the maturities designated in the resolution to submit to a vote of the people.

Question: May the board of education of this district at this time sell the remaining \$480,000 of the bonds; or whether, since the maturity dates for the entire issue of \$800,000 were established in the resolution adopted by the board of education on the first day of September, 1925, can they only sell those bonds which have not matured before this date?”

Section 20 of the Uniform Bond Act, 112 O. L., 385, is as follows:

“Bonds issued prior to the effective date of this act and bonds issued after