

Sections 4021 and 4022, General Code, authorize a municipal corporation to contract with hospitals for their services in the extension of relief to the indigent poor to whom the law requires a municipality to extend relief, but in no wise limits or qualifies the provisions of Sections 3476, et seq.

I am, therefore, of the opinion, in specific answer to your questions, that :

First: Where circumstances are such that a municipality is enjoined by law to extend public relief to an indigent person, such relief properly includes the fees of a surgeon who has performed a necessary surgical operation.

Second: Where circumstances are such that a city is required by law to extend public relief to an indigent person and the needs of such person require the services afforded by a hospital, the municipality may lawfully pay the hospital charges, whether the municipality had previously contracted with such hospital or not.

Third: The answer to your second question renders an answer to the third question unnecessary.

Respectfully,

EDWARD C. TURNER,

Attorney General.

3078.

DELINQUENT REAL ESTATE TAXES—REDEMPTION BY OWNER
AFTER CERTIFICATION AND BEFORE FORECLOSURE—CONDI-
TIONS NOTED.

SYLLABUS:

When real estate has been certified as delinquent and the owner thereof desires to redeem said real estate before foreclosure, and tenders to the county treasurer on or before December 20th (or on or before January 20th if the time in which to pay taxes has been extended to that date by the county commissioners), the amount due on the back years, with costs and penalties, plus the first one-half of the then current year the treasurer should accept said amount and may not demand that the full amount of the current year's taxes be paid on said date.

COLUMBUS, OHIO, December 29, 1928.

HON. CHARLES P. TAFT, 2ND, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads as follows:

“Will you please give us your opinion as to the proper procedure in the following situation:

When real estate has been certified as Delinquent and the owner thereof desires to redeem this real estate before foreclosure and tenders to the County Treasurer on or before December 20th (or on or before January 20th if the time in which to pay taxes has been extended to that date by the County Commissioners) the amount due on the back years with costs and penalties, plus the first half of the then current year, should the Treasurer accept this amount, or must he demand that the full amount of the current year's taxes be paid before accepting same?”

It is assumed that you refer to real estate which has been certified as delinquent to the Auditor of State and that the Auditor of State under the provisions of Section 5718, General Code, has ordered foreclosure proceedings to be brought in the name of the County Treasurer upon the unredeemed delinquent land tax certificate.

Section 5718, General Code, defines the procedure after said certificate is filed with the auditor of state, and reads as follows:

"It shall be the duty of the county auditor to file with the auditor of state, a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years, and a certified copy thereof shall at the same time be delivered to the county treasurer, and it shall be the duty of the auditor of state to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax certificate, within three months from the date of filing of such certificate with the auditor of state, by the county auditor; it shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his petition that the certificate has been duly filed by the county auditor; that the amount of money appearing to be due and unpaid, thereby is due and unpaid and a lien against the property therein described, and the prayer of the petition shall 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. And the treasurer need not set forth any other or further special matter relating thereto. The certified copy of said delinquent land tax certificate, filed with the county treasurer, as hereinbefore provided, shall be prima facie evidence on the trial of the action, of the amount and validity of the taxes, assessments, penalties and interest appearing due and unpaid thereon, plus the amount of eighty-five cents due from the defendants for the delinquency of each year, for advertising and issuance of certificates, and of the non-payment thereof, without setting forth in his petition any other or further special matter relating thereto."

The county treasurer then has for collection the amount of money appearing to be due and unpaid, as stated in said certificate, and said certificate is prima facie evidence of the amount and validity of the taxes, assessments, penalties and interest appearing due and unpaid thereon, and if said delinquency has been advertised, the additional sum of eighty-five cents is due.

In the case of *Hiram Friedman et al. vs. Maria F. Van Antwerp et al.*, 14 O. C. C. (N. S.), page 333, it was held that:

"The owner of real estate, ordered sold in satisfaction of a lien for unpaid taxes or assessments, may redeem the property at any time before confirmation by payment of such taxes or assessments with penalties."

Section 5718, supra, indicates the amount due on delinquent real estate as shown by the delinquent land tax certificate from the county auditor to the county treasurer.

Section 5719, General Code, provides the substance of the judgment which shall be rendered in said foreclosure proceeding, and reads 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 appraisalment. 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. When the land or lots stand charged on the tax duplicate as certified delinquent to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through, and represented by the county treasurer."

It is noted that judgment shall be rendered for taxes and assessments, or any part thereof as are found due and unpaid and for penalty, interest and costs.

It is evident from the provisions of Sections 5718 and 5719, *supra*, that the amount payable as delinquent taxes at any time is the amount due and unpaid plus penalty and interest and also costs for court procedure, if any. The point to be determined in your question therefore, is what amount is due and unpaid on or before December 20th (or a later date fixed by the county commissioners), in other words, when payment is made as of said date may the treasurer accept the first half of the then current year, or must he refuse the first half unless the entire year's taxes are paid.

Section 2653, General Code, provides as follows:

"Each person charged with taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereof on or before the twentieth day of December, or one-half thereof before such date, and the remaining half thereof on or before the twentieth day of June next ensuing, but all road taxes so charged shall be paid prior to the twentieth day of December."

It is therefore optional with the tax-payer whether he pay one-half of the taxes charged on the tax duplicate in the hands of the treasurer before the twentieth day of December, or the full amount thereof on said date and the remaining one-half thereof on or before the twentieth day of June next ensuing. It is clear that no part of the taxes for the current year are delinquent on or before the twentieth day of December. It is also clear that the payment of one-half of said taxes for the current year may be deferred until the twentieth day of June next ensuing, and there is nothing to prevent the county treasurer from accepting the delinquent taxes, plus penalty and interest, without payment of any of the taxes for the current year. If the taxpayer under the circumstances, pays the delinquent taxes plus interest and penalty, and in addition offers to pay one-half of the taxes for the current year on or before December 20th, he is within his rights and privileges, as defined in Section 2653, *supra*.

It is therefore my opinion, in specific answer to your question, that when real estate has been certified as delinquent and the owner thereof desires to redeem said real estate before foreclosure, and tenders to the county treasurer, on or before December 20th (or on or before January 20th if the time in which to pay taxes has been extended to that date by the county commissioners) the amount due on the back years, with costs and penalties, plus the first one-half of the then current year, the treasurer should accept said amount, and may not demand that the full amount of the current year's taxes be paid on said date.

Respectfully,

EDWARD C. TURNER,

Attorney General