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CONSERVANCY DISTRICT—TITLE TO LOT—USE, CONSTRUCTION OF ROADWAY—DEED RECORDED BUT NOT PRESENTED TO AUDITOR FOR TRANSFER—NO APPLICATION MADE FOR EXEMPTION FROM TAXATION—NO LEGAL OBJECTIONS INTERPOSED WHEN LOT FORFEITED FOR NONPAYMENT OF TAXES—LOT SOLD AT FORFEITED LAND SALE—PURCHASER RECEIVES NEW AND PERFECT TITLE FREE FROM PRIOR LIENS AND ENCUMBRANCES.

SYLLABUS:

Where a conservancy district acquires title to a lot which it intends to use in the construction of a roadway and has its deed recorded without having presented it to the auditor for transfer, and thereafter fails to make application for the exemption of such lot from taxation and permits the lot to be forfeited for non-payment of taxes without interposing any legal objections at the time of the hearing in the common pleas court, and thereafter permits such lot to be sold at forfeited land sale, the purchaser thereof receives a new and perfect title free from prior liens and encumbrances.

Columbus, Ohio, December 3, 1946

Hon. Leo E. Carter, Prosecuting Attorney
Caldwell, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“A lot was deeded to the Muskingum Watershed Conservancy District (a State agency) for road easement and was recorded in the deed records, but not transferred or cast off the Tax Duplicate and thereby became delinquent under the name of the original owner and under the procedure prescribed in G. C. 5704 et seq. this lot was forfeited to the State of Ohio and was sold as such forfeited land.

“Who has title to this lot in question? The Muskingum Watershed Conservancy District or the purchaser at the forfeited land sale?”

Authority for the organization of conservancy districts for the purpose of controlling water is found in Sections 6828-1 to 6828-79, inclusive, General Code. Proceedings for the establishment of a district are initiated by the filing of a petition in the common pleas court as set forth in

Section 6828-3, General Code. Following the procedure outlined in Sections 6828-4, 6828-5 and 6828-6, General Code, a district is established and declared to be a corporation. Copies of the findings and decree are required by Section 6828-7, General Code, to be filed in the corporation records in the office of the Secretary of State and to be recorded in the recorder's office of each of the counties in which the district is located. A board of directors consisting of three members is appointed as provided in Section 6828-8, General Code. The powers and duties of the board of directors are found in the succeeding sections. Among the numerous powers given the board, Section 6828-15, General Code, provides, *inter alia*, as follows:

"In order to accomplish the purposes of the district, the board of directors is authorized and empowered: * * *

"(h) To construct or elevate roadways and streets.

"(i) To construct any and all of said works and improvements across, through or over any public highway, canal, railroad right of way, track, grade, fill, cut, or other public or private property located in or out of said district. * * *

"(k) To hold, encumber, control, acquire by donation, purchase or condemnation, construct, own, lease, use and sell real and personal property, and any easement, riparian right, railroad right of way, canal, cemetery, sluice, reservoir, holding basin, mill dam, water power, wharf, or franchise in or out of said district for right of way, holding basin, location or protection of works and improvements, relocation of communities and of buildings, structures and improvements situated on lands required by the district, or for any other necessary purpose, or for obtaining or storing material to be used in constructing and maintaining said works and improvements.

"(l) To replat or subdivide land, open new roads, streets and alleys, or change the course of an existing one, and install therein improvements to replace those in the former roads, streets or alleys. * * *

"(n) And to do all things necessary or incident to the fulfillment of the purposes for which the district is established."

For the purpose of acquiring necessary lands in addition to those acquired or "condemned by the court on the report of the appraisers," Sections 6828-17 and 6828-18, General Code, give the board additional powers of eminent domain. It is thus apparent that a conservancy district

has ample power to acquire, hold and develop such real estate as is essential to the development and maintenance of the district, including the building and maintenance of roadways.

Lands belonging to conservancy districts are properly entitled to exemption from taxation under authority of Section 5351, General Code, which, so far as pertinent herein, provides :

“Real or personal property belonging exclusively to the state or United States, and public property used for a public purpose, shall be exempt from taxation. * * * This exemption from taxation shall not apply to such real and personal property until the current and delinquent taxes thereon have been paid.”

Although Section 5351, General Code, provides that public property used for a public purpose shall be exempt from taxation, its provisions are not self-executing. When property becomes eligible for exemption from taxation, a complaint should be filed with the Board of Tax Appeals (formerly the Tax Commission) as provided in Section 5616, General Code, which reads :

“Any person, board or officer authorized by this act to file complaints with the county board of revision may complain to the tax commission of Ohio at any time prior to the thirty-first day of December in any year, of the determination of a county auditor respecting the liability of any property to taxation in that year, or its exemption therefrom. The commission shall hear such complaint and determine whether the property complained of is subject to taxation and certify its findings to the county auditor, who shall correct the tax list and duplicate accordingly.”

Section 5609, General Code, permits complaints to be filed with the board of revision by any taxpayer, the county commissioners, the prosecuting attorney, the county treasurer, any board of township trustees, any board of education, or the mayor or council of any municipal corporation. When a property is determined by the Board of Tax Appeals to be exempt from taxation, the county auditor removes it from the general tax list of real and utility property which he has prepared as directed in Section 2583, General Code, and adds it to the list of exempted property as directed in Section 5570-1, General Code, which section reads :

“It shall be the duty of the county auditor to make a list of all the property, both real and personal, in his county, and in-

cluding moneys, credits and investments in bonds, stocks, or otherwise, which is exempted from taxation under Sections 3410-6, 4759, 5349, 5350, 5351, 5352, 5353, 5353-1, 5356, 5357, 5359, 5361, 5362, 5363, 7915-1, 10093, 10101, 10105 and 10192 of the General Code. In each case in addition to the name of the owner, such list shall show the value of the property exempted and a statement in brief form of the reason for or ground on which such exemption has been granted. It shall be corrected annually by adding thereto such items of property as may have been exempted during the year and by striking therefrom such items as shall have lost their right of exemption and which shall be reentered on the taxable list. After this act takes effect no additions shall be made to such exempt lists nor additional items of property exempted under any of the sections enumerated herein without the consent of the board of tax appeals, but when any personal property or endowment fund of an institution has once been held by the board of tax appeals to be properly exempt from taxation, it shall not be necessary to obtain the board's consent to the exemption of additional property or investments of the same kind belonging to the same institution, but such property shall appear on the abstract filed annually with the board. The board of tax appeals shall, prior to January 1, 1942, revise the list in every county so that no property is improperly or illegally exempted from taxation; and shall have power to make further revisions at any time thereafter. The county auditor shall follow the orders of the board of tax appeals given under this section. An abstract of such list shall be filed annually with such board on a form to be approved by it, and a copy thereof shall be kept on file in the office of each county auditor for public inspection. The board of tax appeals shall not consider an application for exemption of property under any of the sections enumerated herein unless the application has attached thereto a certificate or affidavit executed by the county treasurer certifying that taxes, assessments, penalties and interest levied and assessed against the property sought to be exempted have been paid in full to the date upon which the application for exemption is filed.

Provided, however, that taxes, penalties and interest which have accrued after the property began its use for the exempt purpose but in no case prior to the date of acquisition of the title to said property by applicant, may be remitted by the county auditor, with the consent of the board of tax appeals."

Considering the above sections, the Supreme Court in the case of *State, ex rel. Methodist Book Concern, v. Guckenberger*, 133 O. S., 27, held:

“1. Under the provisions of Section 5570-1, General Code, the Tax Commission has exclusive authority to declare property exempt, but the county auditor has authority in any year thereafter to strike property items from the exempt list and place them on the taxable list.”

This duty of the former Tax Commission has been transferred to the Board of Tax Appeals by Section 1464 and paragraph 1 of Section 1464-1, General Code. See *Zindorf v. Otterbein Press*, 138 O. S., 287.

From a consideration of the foregoing, it appears that although the lot in question belonging to the Muskingum Watershed Conservancy District may have been entitled to exemption from taxation, an application therefor should first have been made to the Board of Tax Appeals. It further appears that since exemption was never ordered by the Board of Tax Appeals, the county auditor had no authority to remove any of such land from the tax list and duplicate. To the contrary, it was the duty of the county auditor to make assessments against all lands shown on the tax list and duplicate, which included the lot to which you have referred in your inquiry. It might well be that the Conservancy District could have secured a remission of the taxes assessed during the period of its ownership if it had filed a timely application therefor, but a sufficient answer seems to be that, so far as your inquiry discloses, no such application was ever filed.

When taxes and assessments on a parcel of land remain unpaid at two consecutive semi-annual tax settlement periods, such land is added to the list of delinquent lands (Section 5705, General Code) and immediately after the following August settlement the county auditor is required to certify the list of delinquent lands (Section 5704, General Code). At the expiration of two years after certification, such lands as remain on the certified delinquent list are submitted to the board of revision (Sections 5718 and 5718-1, General Code). The board of revision is directed to examine the list and remove therefrom such property or properties as in its opinion will not bring upon sale a sufficient amount of money to pay the total amount charged against it on the tax duplicate, plus costs of foreclosure. A list of lands thus omitted is then submitted to the common pleas court and forfeitures ordered (Section 5718-1a, 5718-1b and 5718-1c, General Code). The lands thus forfeited are thereafter offered for sale

by the county auditor (Section 5752, General Code). Referring to such forfeited land sales, Section 5762, General Code, provides:

“The county auditor on making a sale of a tract of land to any person, under this chapter, shall give such purchaser a certificate thereof. On producing or returning to the county auditor the certificate of sale, the county auditor, on payment to him by the purchaser, his heirs, or assigns, of the sum of one dollar and twenty-five cents shall execute and deliver to such purchaser, his heirs, or assigns, a deed therefor, in due form, which deed shall be prima facie evidence of title in the purchaser, his heirs, or assigns. When a tract of land has been duly forfeited to the state and sold agreeably to the provisions of this chapter, *the conveyance of such real estate by the county auditor shall extinguish all previous title thereto and invest the purchaser with a new and perfect title*, free from all liens and encumbrances, except taxes and installments of special assessments and reassessments not due at the time of such sale, and except such easements and covenants running with the land as were created prior to the time the taxes or assessments, for the nonpayment of which the land was forfeited, became due and payable.”

(Emphasis added.)

When all of the required steps for forfeiture and sale have been taken, the purchaser acquires a new and perfect title free from all liens and encumbrances. Such titles have been upheld on several occasions. In *Kahle v. Nisely*, 74 O. S., 328, it was held:

“Where, under Section 2899, Revised Statutes, lands have been duly forfeited to the state for the nonpayment of taxes and penalty, a valid sale and conveyance of such lands by the county auditor, extinguishes all previous titles thereto, either legal or equitable, and invests the purchaser with a new and perfect title to said lands, discharged from all previous liens and encumbrances.”

In the case of *Cech v. Shultz*, 132 O. S., 353, the third branch of the syllabus reads:

“Sections 5744 and 5762, General Code (114 Ohio Laws, 838 and 841), plainly indicate that a purchaser at a land forfeiture sale acquires, as against the owner, not merely a lien, but a *prima facie* and absolute title to the property, where the statutory proceedings have been legally complied with and no constitutional rights of the owner have been abridged.”

In *Dubin v. Greenwood*, 139 O. S., 546, it was held in the first branch of the syllabus:

“1. Where real estate has been forfeited to the state for the nonpayment of taxes, assessments, etc., under and in accordance with the applicable statutes, a valid sale and conveyance of such real estate by a county auditor extinguishes all previous titles thereto and invests the purchaser with a new and perfect title, free from prior liens and encumbrances. (*Kahle v. Nisely*, 74 Ohio St., 328, and *Cech v. Schultz*, 132 Ohio St., 353, approved and followed.)”

In the situation which you have presented, assuming all of the required preliminary steps have been taken, it seems evident that the purchaser has acquired a title free from the claims of the Conservancy District. Any claim which the Conservancy District may have previously had seems to have been lost by its apathetic attitude. It failed to have its title transferred by the county auditor as required by law. It neglected to seek remission and exemption of taxes. When notified of the pending application in the common pleas court for forfeiture of its lot, it failed and neglected to offer any legal objections as required by Section 5718-1c, General Code. Referring to the term “legal objections,” it is said in Section 5718-1c, General Code:

“The term ‘legal objections’ as used in this section shall mean any one or more of the following:

“1. That the taxes or assessments, penalties and interest have been paid.

“2. That the lands or lots are not properly listed.

“3. That the proceedings to omit such lands or lots from the foreclosure list have been irregular.

“4. That the lists provided for in Sections 5704 and 5718-1b of the General Code have not been published according to law.”

It must therefore be concluded that such legal objections as the Conservancy District might have made in the common pleas court are now *res judicata* and that it is now too late for the Conservancy District to claim that the taxes were paid or the lot entitled to exemption from taxation, that the lot was improperly listed, or that the forfeiture proceedings were irregular. If there are irregularities or procedural defects

of any other kind, they are not disclosed in your inquiry. I must therefore conclude that the proceedings were in all other respects regular and according to law.

In specific answer to your inquiry, it is therefore my opinion that where a conservancy district acquires title to a lot which it intends to use in the construction of a roadway and has its deed recorded without having presented it to the auditor for transfer, and thereafter fails to make application for the exemption of such lot from taxation and permits the lot to be forfeited for nonpayment of taxes without interposing any legal objections at the time of the hearing in the common pleas court, and thereafter permits such lot to be sold at forfeited land sale, the purchaser thereof receives a new and perfect title free from prior liens and encumbrances.

Respectfully,

HUGH S. JENKINS
Attorney General