

332.

BOARD UNDER SECTION 5718-1, GENERAL CODE—DELINQUENT TAX LISTS UNDER SECTION 5718, GENERAL CODE—LAND OWNER—WHITTIMORE ACT.

*SYLLABUS:*

1. *The board mentioned in Section 5718-1, General Code, has no power to omit lands from the delinquent list after the delinquent land tax certificates are made as provided in Section 5718, General Code. Opinion of the Attorney General for 1937, No. 310 followed.*

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

COLUMBUS, OHIO, March 25, 1937.

HON. CHARLES S. KEENEY, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR: I acknowledge receipt of your letter of recent date in which you request an opinion upon the following statement of fact:

"In past years it has been understood by our County officials that when tax foreclosure certificates as provided for in G. C. 5718 et seq., have not been acted upon by the Prosecuting Attorney, re-certification is necessary the next year.

In an opinion of your predecessor numbered 5584 for the year 1936 it was said that once each had been certified for foreclosure they could not be recalled and the Board mentioned in G. C. 5718-1 be omitted from the foreclosure proceedings.

It so happens in this County that practically all lands have been certified for foreclosure. Somewhat as a matter of course. This policy has been revised under the advice of my predecessor. It also appears that in the course of time the taxes, penalties, assessments, etc., have accrued to such an extent many of the lands concerned will not sell for an amount sufficient to meet them, to say nothing of costs of foreclosure, and should be omitted from the foreclosure list. In view of these circumstances within some cases the added one that the properties have not been formally submitted to the board for judgment, may such land be omitted from foreclosure proceedings apes. G. C. 5718-1?

Question 2.

When foreclosure proceedings have been instituted by the

prosecuting attorney or his authorized assistant, it sometimes occurs that the owner will appear before the completion of the foreclosure case and wish to pay his taxes in full or under the Whittemore Act and our County Treasurer doesn't know whether he can insist upon the owners paying any court costs that have accrued up to the time of such payment. If not, how are such costs to be paid?

Question 3.

In the event an owner, after suit filed, comes in and pays part under the Whittemore Act, but fails to carry out his part of that agreement, may the suit already filed be revived by amended petition alias summons or otherwise taken up where left off, at the time of the first Whittemore payment? or must a new suit be filed on a *new* foreclosure certificate?"

An opinion of this office rendered to the Bureau of Inspection and Supervision of Public Office, No. 310, 1937, answers all the questions submitted in your request, other than the first one.

I concur in Opinion No. 5584 (1936) of my predecessor, the syllabus of which reads as follows:

"After lands have been certified to the Prosecuting Attorney as delinquent, for the institution of foreclosure proceedings on said lands, it is the duty of the Prosecuting Attorney to institute foreclosure proceedings thereon to foreclose the lien of the state for taxes, assessments, penalties and interest. Such lands after being so certified may not be recalled and re-submitted to the board as provided for in Section 5718-1, General Code, for the purpose of having said board order the same to be omitted from foreclosure proceedings."

It is fundamental that tax laws are strictly construed. The steps necessary to make taxes a lien on real estate and the grant of power and authority to enforce the same, are chronologically arranged. The procedure is progressive and there is no authority for reversing the machinery at any stage of the procedure. Such an arrangement could only result in making an already chaotic condition, more so.

Section 5718-1, General Code, expressly provides that if lands are to be omitted from the delinquent list the Board therein named must take the necessary steps to omit them before the certificate provided for in Section 5718, General Code, are made.

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 take it that this interpretation of the law fully answers your questions Nos. 2 and 3.

Respectfully,  
 HERBERT S. DUFFY,  
*Attorney General*

---

333.

HOUSE BILL 226 — CONSTITUTIONALITY CONSIDERED —  
 CEMETERIES—LIMITATIONS.

SYLLABUS:

*Constitutionality of House Bill No. 226 and the proposed amendment thereto, providing for the conduct and regulation of burial and cemetery business, considered.*

COLUMBUS, OHIO, March 26, 1937.

HON. ALFRED L. BENESCH, *Director of Commerce, Columbus, Ohio.*

DEAR SIR: I acknowledge receipt of your recent communication as follows:

“I beg to enclose herewith copy of Senate Bill 226 by Senator Zoul, the purpose of which is to recodify the cemetery laws of Ohio.

One hearing on the bill has been held before the Senate Committee on Judiciary, and several legal questions were raised. I should like to secure your opinion as to the following:

1. Has the State of Ohio the right to place a limitation on the number of cemeteries to be established, and in effect declare that no further cemetery space is required?

2. Under its police power, may the State prohibit entirely operation of cemeteries for profit?