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1. TAXES, DELINQUENT REAL ESTATE, ASSESSMENTS, PENALTIES, INTEREST—NO AUTHORITY TO ACCEPT COMPROMISE SETTLEMENT.
2. WHEN FORECLOSURE ACTION INSTITUTED FOR COLLECTION, PROPERTY TO BE SOLD BY SHERIFF INCLUDES LAND, BUILDINGS, STRUCTURES, IMPROVEMENTS AND FIXTURES—SECTIONS 5718-3, 5719 G.C.

SYLLABUS:

1. *There is no authority for the acceptance of a compromise settlement of delinquent real estate taxes, assessments, penalties and interest.*

2. *When a foreclosure action is instituted for the collection of delinquent taxes, assessments, penalties and interest under authority of Sections 5718-3 and 5719, General Code, the property to be sold by the sheriff includes not only the land itself but also all buildings, structures, improvements and fixtures of whatever kind situated thereon.*

Columbus, Ohio, September 19, 1941.

Hon. Rodney R. Blake, Prosecuting Attorney,
Sidney, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion regarding a compromise settlement of real property taxes levied upon leased real estate. Without quoting your entire letter which contains a copy of a lease upon a property located in Shelby County, it appears that this lease was made on October 6, 1925, for a term of five years. The lease provided that the lessee might remove all buildings and other improvements upon his default or upon termination of the lease. You further state that lands and buildings have been separately entered on the general tax list and duplicate in the names of the lessor and lessee respectively; that the lessee has failed to pay the taxes and penalties charged against the buildings since 1928; that the lessor, who is now in possession of the premises, has paid all taxes assessed against the land and that he now offers a compromise settlement of the delinquent taxes and assessments charged against the buildings. You then state:

“There is some question whether the buildings are worth the amount of the taxes, assessments, etc.; the buildings and land are worth more than the taxes, assessments, etc.

We would appreciate your opinion as to who, if anyone, has the right to accept a compromise settlement in view of the above facts and if no one has the authority to compromise the claim, what property is subject to sale on foreclosure to collect the taxes.”

In the case of *Cincinnati College v. Yeatman*, 30 O.S., 276, the Supreme Court recognized that realty might be divided not only by vertical lines, but that buildings thereon might be divided horizontally and a portion thereof conveyed. Not only may such a conveyance be of a fee, but it may also be in the form of a permanent lease. In either case the auditor, under authority of Sections 2573, 2583 and 5560, General Code, is empowered to make a division of the property for purposes of taxation and make appropriate entries on the general tax list and duplicate of real and public utility property. Section 5563, General Code, authorizes the separate listing of minerals and rights thereto. I know of no authority, however, for the division of property on the duplicate so

as to show lands in the name of the owner, and buildings affixed to the realty in the name of a lessee holding under a five-year lease. Section 2 of Article XII of the Constitution of Ohio says: "Lands and improvements thereon shall be taxed by uniform rule according to value." Section 5322, General Code, provides:

"The terms 'real property' and 'land' as so used, include not only land itself, whether laid out in town lots or otherwise, and all growing crops, including deciduous and evergreen trees, plants and shrubs, with all things contained therein but also, unless otherwise specified, all buildings, structures, improvements, and fixtures of whatever kind thereon, and all rights and privileges belonging or appertaining thereto."

The phrase "unless otherwise specified" must be regarded as meaning unless otherwise specified in the General Code of Ohio rather than referring to any agreement which might be made by the land owner and any other person such as a lessee. It was not the intention of the legislature to permit taxpayers to escape taxation by the expedient of making an agreement with some other person that buildings and fixtures on the realty should be regarded as personal property and thereby permitting such buildings and fixtures to be returned for the purposes of taxation at seventy or fifty per cent of their valuation as provided in Section 5388, General Code. Touching on this same subject, a former Attorney General said, as disclosed in the first and second branches of the syllabus of Opinion No. 3453, appearing in Opinions of the Attorney General for 1938, Volume III, page 2349:

"1. Where land is leased for filling station purposes for a term of years and the lease contains a stipulation that the building erected by the lessee shall not become a part of the realty, is binding as between the lessor and lessee, it does not bind the taxing authorities of the State of Ohio.

2. The land and building should be carried on the real estate duplicate as 'real estate' or 'land,' as provided by Section 5322, General Code."

Real property is to be listed on the general tax list and duplicate as provided in Section 2583, General Code, which reads in part:

"On or before the first Monday of August annually, the county auditor shall compile and make up, in tabular form and alphabetical order, separate lists of the names of the several persons, companies, firms, partnerships, associations and cor-

porations in whose names real property has been listed in each township, city, village, special district, or separate school district or part of either in his county, placing separately, in appropriate columns opposite each name, the description of each tract, lot or parcel of real estate, the value of each tract, lot or parcel and the value of the improvements thereon, if any, * * * Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the county auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commission of Ohio, and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the county auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year. * * * "

It is the duty of the treasurer to collect the entire amount of taxes charged on the duplicate in the name of the owner, Section 2655, General Code, providing:

"No person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate, except only when the collection of a particular tax is legally enjoined. * * * "

Section 3892, General Code, provides that special assessments shall be collected "in the same manner and at the same time as other taxes are collected." This provision was held by the Supreme Court in the case of State, ex rel. Brown, v. Cooper, 123 O.S., 23, to require the county treasurer to collect installments of special assessments upon real estate when due or past due in the same manner and at the same time as other taxes are collected.

Section 2653, General Code, authorizes payment of taxes in cash, semiannually or in ten monthly installments. Section 2672, General Code, authorizes payment of delinquent taxes, assessments and penalties in five semiannual installments. Section 2672-1, et seq., General Code, frequently called the Whittemore Act, permits taxes, assessments, penalties and interest to be paid in ten annual installments, with an abatement of penalties, interest and charges for 1936 and prior years. These appear to be the only authorized methods for the voluntary payment of taxes.

If the tax lien is foreclosed, Section 5719, General Code, provides:

"From the proceeds of the sale the cost shall be first paid, next the amount found due for taxes, assessments, penalties,

interest and charges, next the amount of any taxes and assessments accruing after the entry of the finding and before sale, all of which taxes, assessments, penalties, interest and charges shall be deemed satisfied, though the amount applicable thereto be deficient, and the balance, if any, shall be distributed according to law. * * * ”

This, however, is not such a compromise settlement as you have under consideration. It is provided in Section 5671, General Code, that:

“The lien of the state for taxes levied for all purposes, in each year, shall attach to all real property subject to such taxes on the day preceding the second Monday of April, annually, and continue until such taxes, with any penalties accruing thereon, are paid. * * * ”

I must therefore conclude that there is no authority for the compromise of delinquent taxes assessed against real estate.

In specific answer to your inquiry, it is my opinion that there is no authority for the acceptance of a compromise settlement of delinquent real estate taxes, assessments, penalties and interest. When a foreclosure action is instituted for the collection of delinquent taxes, assessments, penalties and interest under authority of Sections 5718-3 and 5719, General Code, the property to be sold by the sheriff includes not only the land itself but also all buildings, structures, improvements and fixtures of whatever kind situated thereon.

Respectfully,

THOMAS J. HERBERT,

Attorney General.