

person owning or claiming an easement in the property was a party to the action and was either served or appeared. Undoubtedly if either of these defendants had appeared in the action and claimed that the property upon which the lien existed was subject to an easement in favor of the defendant thus appearing, and the court had by judgment attempted to sell the property free and clear of those liens, that judgment would have been erroneous and would have been reversed on appeal. * * * But in this case neither of the defendants whom it is claimed now might have an easement appeared or defended the action or made any claim to any interest in the property. The judgment was entered in an action to which all these owners of these so-called easements were parties, and a conveyance by referee will convey to the purchaser all the interest of all the parties to the action whether by easement, or as owners of the fee."

It is manifest that there may be easements which under a tax sale of land burdened by said easements lawfully acquired prior to the levying of the tax under which the sale is made, are not extinguished by said sale.

It is evident that the lien for taxes is the first and best lien, and that the state has the right to institute foreclosure proceedings in the same manner as is provided by law for foreclosure of mortgages on land; provided the taxes, assessments and penalties have not been paid for four consecutive years.

All persons having or claiming an interest in the premises as a right of way or otherwise, should be made parties, and should set up their respective claims and interests. The court may then determine said respective rights and interests, and also, whether the land may be sold free of or subject to said interests.

It is therefore my opinion that in suits to foreclose liens for non-payment of delinquent taxes, all persons having or claiming an interest in the land should be made parties to said suit and should set up said claim or interest so that the court may determine according to law, their respective rights and interests; and whether said land shall be sold free or subject to said rights and interests.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1728.

COUNTY TREASURER—DEPUTY AND CLERK HIRE DISCUSSED—
APPROPRIATION OF COUNTY COMMISSIONERS.

SYLLABUS:

The amount of money that may be expended by a county treasurer for deputies, assistants or clerk hire may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose. If a board of county commissioners, in the exercise of its discretion in the matter, does not see fit to make supplemental appropriations, or if by way of receipts and balances in the general county fund there is not sufficient money to make such supplemental appropriations, a county treasurer is without authority to pay deputies, assistants or clerks an ag-

gregate compensation exceeding that fixed by appropriations theretofore made by the board of county commissioners for such office.

COLUMBUS, OHIO, February 17, 1928.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—This will acknowledge your letter dated February 15, 1928, which reads:

“Where under Section 2981 of the General Code of Ohio, the county commissioners fix an amount for the hire of deputies of the county treasurer’s office which is not sufficient in the mind of the county treasurer and the county commissioners refuse to enlarge it, what is the remedy of the county treasurer?”

The amount now allowed for deputies by the commissioners is \$3,000.00 and the earning capacity of the treasurer’s office as based on the fees is \$6,690.53 per year.”

Section 2981, General Code, as amended by the 87th General Assembly (112 v. 107) provides:

“Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties approved by him, conditioned for the faithful performance of their official duties. Such bond with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office.”

A question analogous to that which you present was considered in Opinion No. 1339, dated December 8, 1927, addressed to the Bureau of Inspection and Supervision of Public Offices, the syllabus of which reads as follows:

“Although the board of county commissioners has nothing to do with the question as to the number of deputies, assistants or clerks that may be appointed by the sheriff and other officers of the county for their respective offices, nor with the amount of compensation to be paid any deputy, assistant or clerk in said several offices, the board of county commissioners is charged with the duty, to be exercised in its sound discretion, of making appropriations to pay the compensation of deputies, assistants and clerks in such offices; and the amount that may be expended by the sheriff or other county officers for deputies, assistants or clerk hire, may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose with respect to the said several county offices.”

Your attention is directed to the following language which appears therein:

"However, if the board of county commissioners of this county, in the exercise of its discretion in the matter, does not see fit to make such supplemental appropriations, or if by way of receipts and balances in said fund or monies transferred thereto there is not in said fund sufficient monies to make such supplemental appropriations, there would in such case be no authority for paying deputies, assistants or clerks in any such county offices an aggregate compensation exceeding that now fixed by appropriations heretofore made by the board of county commissioners for such respective offices."

In view of the foregoing and answering your question specifically, it is my opinion that the amount of money that may be expended by a county treasurer for deputies, assistants or clerk hire may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose. If a board of county commissioners, in the exercise of its discretion in the matter, does not see fit to make supplemental appropriations, or if by way of receipts and balances in the general county fund there is not sufficient money to make such supplemental appropriations, a county treasurer is without authority to pay deputies, assistants or clerks an aggregate compensation exceeding that fixed by appropriations theretofore made by the board of county commissioners for such office.

I am enclosing herewith a copy of Opinion No. 1339 referred to.

Respectfully,
EDWARD C. TURNER.
Attorney General.

1729.

APPROVAL, BONDS OF OAKWOOD VILLAGE SCHOOL DISTRICT,
MONTGOMERY COUNTY, OHIO—\$206,500.00.

COLUMBUS, OHIO, February 18, 1928.

Industrial Commission of Ohio, Columbus, Ohio. --

1730.

CEMETERIES—PURCHASE AND RESALE OF INDIVIDUAL GRAVE
VAULTS—AUTHORITY OF TOWNSHIP TRUSTEES.

SYLLABUS:

The trustees of a township are not authorized, by virtue of the authority vested in them with respect to the management and control of cemeteries, or otherwise,