

that while, as above stated, there might be some doubt as to the legality of the arrangement in question, yet the pay he received from the fund subscribed was by virtue of the officer's appointment by the city and should be taken as the basis in determining his average weekly wage for the purpose of fixing the amount of compensation to be paid to his dependents.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2207.

COUNTY TREASURER—MUST FILE CIVIL ACTION IN COMMON PLEAS COURT TO ENFORCE LIEN OF DELINQUENT TAXES WITHOUT REGARD TO AMOUNT OBTAINABLE.

SYLLABUS:

It is the duty of the county treasurer, when requested by the auditor of state, to enforce the lien of delinquent taxes and assessments, or either, and any penalty thereon, by civil action, for the sale of the premises in the court of common pleas of the county, without regard to the amount claimed, and without regard to the probable amount to be obtained, in the same way mortgage liens are enforced.

COLUMBUS, OHIO, June 6, 1928.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of June 2nd, 1928, reading as follows:

“The Auditor of State has certified the West 25-100 feet of the East Twenty-seven and twenty-five hundredths (27.25) feet of the North One Hundred and Three (103) feet to Lot Number One (1) in Boody's Addition, to the City of Toledo, Lucas County, Ohio, to this office and instructed us to institute foreclosure proceedings; you will note that property only three inches in width is involved and no doubt grows out of an error in making out the deeds. However, the adjoining property owners do not want to assume the delinquent taxes and it would entail considerable expense to institute foreclosure suit. No doubt this question has come up in other districts and we would like to be advised what to do in this matter.”

You do not state any specific questions in your communication and I assume that you desire to know whether or not under the circumstances outlined in your letter it is the duty of the county treasurer to enforce the lien for delinquent taxes as prescribed by statute.

If this be your question it was answered in Opinion No. 2100, rendered under date of May 15, 1928, to the Honorable J. R. Pollock, Prosecuting Attorney, Defiance, Ohio, the syllabus of said opinion reading as follows:

“It is the duty of the county treasurer, when requested by the auditor of state, to enforce the lien of delinquent taxes and assessments, or either, and any penalty thereon, by civil action, for the sale of the premises in the court of common pleas of the county, without regard to the amount claimed,

and without regard to the probable amount to be obtained, in the same way mortgage liens are enforced."

In the opinion it was said:

"It is noted that the several parcels and lots of land in question were certified as delinquent, and that the auditor of state has requested and directed the county treasurer to sell the same, the requests having been received by the County Treasurer in 1922. You suggest that many of these parcels of land will not sell for enough to pay the court costs of the foreclosure proceedings, and inquire whether or not the county treasurer must proceed with the sale of these parcels of land regardless of whether or not enough money will be realized from the sale of the same to pay the court costs of the various proceedings, and 'whether there is some other method of disposing of these cases without taking them through the courts.'

Section 5718, General Code, provides in part that:

"* * * 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;
* * *"

This section further provides that a certified copy of the delinquent land tax certificate required to be filed with the county treasurer, 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.

Section 5719, General Code, provides for the rendering of judgment in such cases and for the distribution of the proceeds of the sale. * * *

Under the provisions of Section 5718, General Code, it is 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.

It is also the duty of the county auditor to deliver a certified copy of said certificate to the county treasurer. Said section then provides 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 land tax certificate. * * *

Section 2667 of the General Code, provides as follows:

'When taxes or assessments, charged against lands or lots or parcels thereof upon the tax duplicate, authorized by law, or any part thereof, are not paid within the time prescribed by law, the county treasurer in addition to other remedies provided by law may, and when requested by the auditor of state, shall enforce the lien of such taxes and assessments, or either, and any penalty thereon, by civil action in his name as county treasurer, for the sale of such premises, in the court of common pleas of the county, without regard to the amount claimed, in the same way mortgage liens are enforced.'

Under the provisions of this section it is the mandatory duty of the county treasurer when requested by the auditor of state to enforce the lien

of the taxes or assessments and the penalties thereon by civil action in his name as county treasurer; and without regard to the amount of said taxes said treasurer is authorized to enforce said lien in the same way that mortgage liens are enforced. In such actions the county treasurer is represented by the prosecuting attorney.

The foregoing sections prescribe the procedure by which the county treasurer shall enforce the lien of taxes and assessments or either, or any penalties thereon, but if any such lands or town lots are not sold for want of bidders the same shall under the provisions of Section 5744, General Code, be forfeited to the state. This section reads as follows:

'Every tract of land and town lot offered for sale by the treasurer, as provided in the next preceding chapter, and not sold for want of bidders, shall be forfeited to the state. Thenceforth all the right, title, claim, and interest of the former owner or owners thereof, shall be considered as transferred to, and vested in, the state, to be disposed of as the general assembly may direct.'

Provisions for the sale of lands not sold for want of bidders and forfeited to the state are contained in Sections 5748 to 5773, General Code, to which your attention is directed. It is unnecessary to set forth all these sections herein, your attention being especially directed to Sections 5748, 5750 and 5755. * * *"

I am enclosing a copy of Opinion No. 2100 above quoted from, as well as a copy of Opinion No. 1814, rendered under date of March 5, 1928, to the Honorable Oscar A. Hunsicker, Prosecuting Attorney of Akron, Ohio, which may be of interest in connection with your problem.

If the opinions enclosed do not answer the questions confronting you, upon the submission of a request to this department stating specifically the questions you desire to be answered, the same will receive prompt consideration.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2208.

**BOARD OF EDUCATION—CANNOT SELL SCHOOL BUILDING UNTIL
FOUR YEARS AFTER SUSPENSION—EXCEPTIONS.**

SYLLABUS:

A board of education has no authority to dispose of school buildings under its jurisdiction, by sale or otherwise, until four years after the suspension of the school which had been conducted therein, unless the said building has been condemned for school use by the Director of Industrial Relations of Ohio, or unless a new building has been erected, or is in process of erection, to house the children of the territory affected.

COLUMBUS, OHIO, June 7, 1928.

HON. W. M. MCKENZIE, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows: