

to sell cigarette wrappers without complying with all the provisions of law necessary to engage in the business of selling a different commodity, namely, cigarettes; but a consideration of the entire act would, in my opinion, lead a court to conclude that this language in the penal section is inadvertent.

Accordingly, in view of the general legislative intent expressed in the title of Amended Senate Bill No. 324, and the further rules of strict statutory construction applicable to taxing and penal laws, I am impelled to the conclusion that a person either selling or giving away cigarette wrappers need not comply with the provisions of law relating to cigarettes.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

4008.

TAX FORECLOSURE—PURCHASE PRICE MAY NOT BE PAID IN INSTALLMENTS—SECTION 2672, G. C., INAPPLICABLE.

*SYLLABUS:*

1. *Section 2672 of the General Code, relating to the payment of delinquent taxes in installments, has no application to the payment of the purchase price of property sold upon tax foreclosure sale.*

2. *There is no statutory authorization or permission for the payment of the purchase price in such sales in installments, as described in Section 2672 of the General Code, for the payment of taxes.*

COLUMBUS, OHIO, January 29, 1932.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Your request for opinion is as follows:

“Will you kindly advise me whether or not the method provided in Section 2672 of the General Code for the paying of delinquent taxes in installments would apply in cases where land is sold by the sheriff for non-payment of taxes?

In other words, could the purchaser at the tax sale pay the purchase price in installments as set forth in the statute?”

Sections 5718-3 and 5719 of the General Code, provide the manner of procedure for the sale of property to enforce the lien of taxes, and the section last named, in so far as material to your inquiry, reads as follows:

“A finding shall be entered of the amount of such taxes and assessments, or any part thereof, as are found due and unpaid, and of penalty, interest, costs and charges, for the payment of which, together with all taxes and assessments payable subsequent to certification for foreclosure, the court shall order such premises to be sold without appraisement for not less than the total amount of such finding and costs, unless the prosecuting attorney shall apply for an appraisal, in which event the premises shall be appraised in the manner provided by section 11672 of

the General Code, and shall be sold for at least two-thirds of the appraised value thereof. From the proceeds of the sale the costs 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. \* \* \*

Section 5718-3, *supra*, specifically states:

“ \* \* that the court make an order that said property be sold \* \* in the manner provided by law for the sale of real estate on execution excepting as hereinafter otherwise provided. \* \* ”

This section is part of Am. S. B. 326 and I find no provisions in such act providing for the sale of property in such case for other than cash.

The effect of these sections is to modify the provisions of the statute providing the manner of sale and foreclosure of liens on real property to the extent therein stated only in sales to enforce tax liens.

In the general laws affecting sales on execution (Sections 11664 and 11711 of the General Code) provision is made for the sale of property in foreclosure on terms other than cash when the court in its decree provides for terms in accordance with such sections.

The ordinary rule of sales of real property is that the conveyance of title and the payment of the purchase price are concurrent acts unless there is an agreement to the contrary. This rule has been universally followed in judicial sales, the statute providing for punishment of a bidder at a judicial sale who does not pay the bid price upon tender of the deed as for contempt.

The obligation of the purchaser at a judicial sale is to pay the amount which he bid—not to pay off the encumbrances which have been merged into the decree. When a promissory note has been reduced to judgment it is a universal rule that the obligation of the note ceases to exist and is merged into the judgment. Likewise a mortgage lien upon property is merged into the judgment and decree of the court and is extinguished whether the property is sold in foreclosure sale for the amount of the mortgage or for a lesser amount; and, if the purchaser bids a lesser amount than that found due upon the mortgage there is no obligation upon the purchaser to pay to the sheriff any amount in excess of his bid regardless of the amount of the finding. Like reasoning persuades me to hold that the claim and lien for taxes which is the subject matter of the action, is merged into the decree and there is no obligation upon the purchaser to pay such tax which is the subject matter of such court action.

Section 2672 of the General Code, reads as follows:

“Delinquent taxes, assessments and penalties charged on the tax duplicate against any entry of real estate may be paid in installments at and during five consecutive semi-annual tax paying periods, whether such real estate has been certified as delinquent or not. Such installment payments may be made at the times provided by law for the payment of current taxes and shall be received with the full amount of current taxes then payable and not otherwise. Each installment payment shall be applied to the items of taxes, assessments and penalties so charged in the order in which such items became due. Each installment shall be

not less than one-fifth of the total principal amount of the taxes, assessments and penalties so charged, unless the collection of a particular tax has been legally enjoined, together with the full amount of interest, if any, accrued on the unpaid portion of the principal at the time of the payment of such installment, unless at any payment period, less than one-fifth of such total principal amount remains unpaid, in which event the entire balance, together with interest shall be paid; the last of such installments shall also include the costs of certification of such land as delinquent, as prescribed by section 5713 of the General Code."

This section makes provision for the payment of taxes in installments and I do not believe the meaning of the language used by the legislature could by any possible means of interpretation be held to include the payment of the purchase price in a foreclosure sale for taxes in installments.

I am therefore of the opinion that:

1. Section 2672 of the General Code, relating to the payment of delinquent taxes in installments has no application to the payment of the purchase price of property sold upon tax foreclosure sale.

2. There is no statutory authorization or permission for the payment of the purchase price in such sales in installments as described in Section 2672 of the General Code, for the payment of taxes.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

4009.

IMMUNITY CERTIFICATE — BACK TAXES — TAX COMMISSION MUST  
ISSUE TO PERSON MAKING HONEST PERSONAL TAX FOR 1932.  
SYLLABUS:

*If a person against whom the county auditor in the year 1931 has made an assessment for personal property taxes for the years 1926 to 1931, inclusive, whether such assessment is made upon the investigation and report of the county board of revision or otherwise, makes application to the tax commission prior to the first day of April 1932, for a certificate of immunity with respect to such back taxes as provided for in section 5398-1, General Code, as enacted in Amended Senate Bill No. 323, 114 O. L. 746, and if the tax commission on such application finds that such person in the year 1932 has made a personal tax return and has therein fully and in good faith listed all the taxable property which he is then required to list, it will be the mandatory duty of the tax commission to issue such immunity certificate.*

COLUMBUS, OHIO, January 29, 1932.

HON. J. D. SEARS, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you which reads as follows:

"I respectfully submit for the opinion of your office, the following facts:

Pursuant to Section \_\_\_\_\_ of the General Code of Ohio, County Auditor, together with the other members of the Board of Review, in-