

871.

FORFEITED LAND SALE—PURCHASER—REGISTERED  
LANDS—VALID TITLE—COMPLIANCE WITH ALL RE-  
QUIREMENTS SECTION 8572-58, G. C.

*SYLLABUS:*

*A purchaser of registered lands at a forfeited land sale acquires a valid title thereto when and only when there has been a compliance with all the requirements of Section 8572-58, General Code.*

COLUMBUS, OHIO, June 11, 1939.

HON. WARD C. CROSS, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent request for my opinion, which reads as follows:

“We have upon our forfeited land list a large number of parcels of relatively small value, title to which has been Torrenized in accordance with the statutes relative to the registration of land titles.

The value of this property makes it prohibitive for a purchaser at Auditor’s Sale to comply with Section 8572-58.

We have before us your opinion No. 192, dated February 23, 1939, the second paragraph of the syllabus of which is as follows: The purchaser of land at forfeited sale acquires absolute title of the property, free from all previous encumbrances where there had been a legal compliance of all statutory requirements.

In the body of the opinion you refer to the case of Kahle v. Nisley, 74 O. S. 328, which holds as follows: ‘Where under Section 2899, Revised Statutes, lands have been duly forfeited to the State for the non-payment of taxes and penalties, a valid sale and conveyance of such lands by the County Auditor, extinguishes all previous titles thereto, either legal or equitable, and invests the purchaser with a new and perfect title to said land discharged from all previous liens and encumbrances.’

If this is the law relative to titles acquired through Auditor’s Sale, would the Auditor’s Deed conveying the title to lands which have been placed under register commence a new chain of title and invest the purchaser with the title which would be valid as against the former owner?”

Article II, Section 40, of the Constitution of Ohio authorizes the passage of laws for a system registering, transferring, insuring and guar-

anteeing land titles by the state, and for the settling and determining adverse or other claims to and interest in, lands the titles to which are so registered, insured or guaranteed. Under such authority Sections 8572-1 to 8572-118, inclusive, General Code, have been enacted. In Section 8572-22 it is stated that upon completion of the registration of the title, the decree of registration shall have the effect of a decree in rem and, subject only to the exceptions stated in Section 25, shall bind the land and all interests, rights and estates therein and liens and charges thereon and, after the expiration of the time to prosecute error or appeal and except as otherwise provided in this act, shall be absolutely conclusive upon and against all persons including the state or any political subdivision thereof. The effect of the decree of registration is further stated in Section 8572-26, General Code, which so far as pertinent is as follows:

“The obtaining of a decree of registration and receiving a certificate of title shall be deemed as an agreement running with the land and binding upon the applicant and the successors in title that the land shall be and forever remain registered land and subject to the provisions of this act and of all acts in amendment thereof. All dealings with the land or any estate or interest therein, after the same has been brought under this act, and all liens, encumbrances and charges upon the same shall be made, only subject to the terms of this act.”

After title has been registered it remains registered thereafter, as shown by Section 8572-86, General Code, which is as follows:

“No land once brought under and made subject to the provisions of this act shall ever be withdrawn.”

The only exception thereto permitting the cancellation of registered title is found in Section 8572-64a, which is in part as follows:

“Any person owning real estate the title to which is registered may surrender his certificate to the county recorder, who shall thereupon cancel said certificate of record, and thereafter said title shall be considered the same as if it had never been registered. All deeds and mortgages heretofore filed conveying registered lands, the registration certificate of which has been surrendered as herein provided for, shall be recorded according to law, and thereafter the lands considered the same as if they had never been registered.”

Section 8572-58, referred to in your letter, definitely sets forth the

procedure relative to transfers and registrations of title when lands have been sold at forfeited land sales and is as follows:

“A tax deed of registered land, or an estate or interest therein, issued in pursuance of any sale for a tax, assessment or other imposition, made after the taking effect of this act, shall have only the effect of an agreement for the transfer of the title upon the register. And before any person dealing with such land shall be affected by such tax deed said deed must be filed in the recorder’s office and a memorial of such filing be made by the recorder on the registered certificate of title for such land. But no registration of title under such tax deed shall be made, or certificate of title issued thereon, unless the tax deed is filed within sixty days after its date, or in any case except upon the order of the court, on application therefor by petition to which all persons in interest shall be made parties and brought before the court. Any person interested in the land may show, as cause why such certificate of title shall not issue, any fact that might be shown at law or in equity on his behalf to set aside such tax deed; and the party named in the tax deed shall be required to show affirmatively that all of the requirements of the statute to entitle him to a deed have been strictly complied with, and in such suit the court may decree such deed and tax sale under which the same was issued to be invalid for the purposes of entitling the purchaser or grantee to a transfer of the title to said land and order the same to be cancelled upon the payment by any party in interest to said purchaser or grantee of the amount so paid by him on such tax sale and subsequently as taxes on the property, together with interest on all sums.”

My opinion, No. 192, referred to in your inquiry, as you have noted, was to the effect that the purchaser at a sale of forfeited lands acquires an absolute title to the property free from all previous encumbrances where there has been a legal compliance with all statutory requirements. Registered title should not be classed as encumbrances. The registration of title is a system for recording or registering the evidence of titles to lands and the purpose of the system is said to be to simplify the transfer of real estate and to render title thereto safe and indefeasible through registration. Such a system cannot be classified as an encumbrance which has been defined as any right to or interest in land which may subsist in third persons to the diminution of the land but consistent with the passing of the fee by conveyance. Where unregistered lands are sold at forfeited land sale, the purchaser acquires title as provided in Section 5762, General Code, upon presenting his certificate of sale and the sum of \$1.25 to the county auditor and receiving from the auditor a deed which

is prima facie evidence of his title. In the case of registered lands, however, title does not pass until the purchaser has complied with the requirements of Section 8572-58, supra. Although this procedure may appear to be burdensome, it should be realized that the benefits of title registration are accompanied by the burdens of the system.

Answering your question specifically, it is my opinion that the purchaser of registered lands at a forfeited land sale acquires a valid title thereto when and only when there has been a compliance with all the requirements of section 8572-58, General Code.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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872.

VILLAGE—SURRENDER OF CORPORATE POWERS—WHEN  
OBLIGATIONS PAID, ALL MONEY OR PROPERTY RE-  
MAINING BELONG TO SUCH VILLAGE SCHOOL DIS-  
TRICT—SECTIONS 3513, 3514 G. C.—MEDINA COUNTY.

SYLLABUS:

*Upon the surrender of its corporate powers by a village, in accordance with the provisions of Section 3513, General Code, when all existing obligations have been paid, by the express terms of Section 3514, General Code, all money or property remaining after such surrender shall belong to the school district embracing such village.*

COLUMBUS, OHIO, July 11, 1939.

HON. R. E. SNEDDEN, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIRS Your letter of July 1, 1939, requesting my opinion as to the disposition of the public funds of the recently dissolved village of Western Star, Ohio, duly received. Your request reads as follows:

“The Village of Western Star, Medina County, Ohio, upon an election duly and legally had, surrendered the corporate powers of the Village.

They had in their possession a general fund, money received from the gas tax and automobile license, set up in different funds. Request that your office render an opinion indicating to which of the various political subdivisions do these various balances, after all obligations have been paid from these various funds, belong.

For your information, the Prosecuting Attorney's office of Summit County has rendered an opinion that all of same belong