

**OPINION NO. 91-029****Syllabus:**

1. When a city takes real property through eminent domain proceedings and obtains a judgment entry stating that the fee simple title is vested in the city free and clear of the claims of the owners and any person having an interest in the property, including the county treasurer and county auditor, the county is effectively precluded from making a successful claim to recover any tax delinquency remaining after proceeds of the taking have been applied to taxes due.
2. A taking by eminent domain is an *in rem* proceeding in which claims for delinquent real property taxes are transferred from the property itself to the award made by a jury for acquisition of the property.
3. The question whether a tax lien on real property is released by a taking by eminent domain when the award returned by the jury is insufficient to satisfy the real estate tax delinquency is not clearly established under Ohio law; it appears, however, that such release may be implied from the nature of a taking by eminent domain.

**To: Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio**

**By: Lee Fisher, Attorney General, July 15, 1991**

I have before me your predecessor's request for an opinion on the question "whether the lien for unpaid real estate taxes is released from lands appropriated for public use by a subdivision of the state in which the award returned by the jury is insufficient to satisfy the real estate tax delinquency on the property appropriated." The request letter describes a situation in which a city has taken property for public purposes by eminent domain proceedings<sup>1</sup> in accordance with R.C. Chapter 163, and sets forth the following facts:

The City of Cleveland, after declaring the area designated the East 79th Street 1 Action Area blighted, appropriated properties in the Area pursuant to the redevelopment plan adopted by the City. Ten fee owners failed to answer or appear; and juries were duly impaneled, received testimony from an independent fee appraiser retained by the City to appraise each property as prescribed by federal guidelines incorporated into R.C. §163.59, and rendered a verdict establishing just compensation in the amount recommended by the testimony of the appraiser. The award in each case was applied to the tax lien, but was insufficient to satisfy unpaid taxes.

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The trial court in each of these cases in the judgment entry...vested title to the properties in the City of Cleveland free and clear of all claims, including the tax lien, as follows:

Further, in conformity with these proceedings, IT IS ORDERED, ADJUDGED AND DECREED that the fee simple title in the premises described in the Petition for Appropriation, the same being located in and more fully described as follows:

(Description Omitted)

be and the same hereby is duly vested in the City of Cleveland, free and clear of the claims of the owners of

<sup>1</sup> The terms "eminent domain," "condemnation," and "appropriation" are interchangeable and are so used throughout this opinion. See *Carroll Weir Funeral Home v. Miller*, 2 Ohio St. 2d 189, 207 N.E.2d 747 (1965).

said land and any person or persons having an interest therein, to-wit: (Names Omitted); Francis E. Gaul, Cuyahoga County Treasurer; and Timothy McCormack, Cuyahoga County Auditor.

IT IS FURTHER ORDERED that a certified copy of this entry be transmitted to the County Auditor, that the County Auditor transmit same to the County Recorder for recording in the Deed Records of this County; that the landowners pay from this deposit any taxes required to be paid...pursuant to law; that the Plaintiff, City of Cleveland, pay all Court costs herein accrued; and that a record be made of these proceedings according to law.

The County Treasurer and the County Auditor were named by the City as defendants in the petitions for appropriation.

The question is whether the county prosecutor may bring proceedings "to recover the tax delinquency upon the properties appropriated by the City of Cleveland or whether the lien has been extinguished because of the appropriation proceedings." I am aware of no authority that directly addresses this question. It appears that the question arises because of apparent conflicts between existing statutory provisions governing tax collection and general principles of constitutional and case law relating to eminent domain proceedings.

For ease of discussion, I am considering Ohio law as it is currently in effect. I note that a number of changes with respect to tax foreclosure, forfeiture actions and sales were made in 1987-1988 Ohio Laws, Part III, 4583 (Am. Sub. H.B. 603, eff. June 24, 1988). I am considering the law subsequent to such amendments.<sup>2</sup>

#### I. Eminent Domain Proceedings

It is helpful to consider first the general nature of an eminent domain proceeding.<sup>3</sup> The taking of private property for a public purpose is governed by Ohio Const. art. I, §19, which prohibits the taking of private property without compensation, and by R.C. Chapter 163. A municipal corporation is, pursuant to Ohio Const. art. XVIII, §§3 and 10, granted the power of eminent domain within its boundaries. See *State ex rel. Bruestle v. Rich*, 159 Ohio St. 13, 110 N.E.2d 778 (1953). A municipal corporation also has eminent domain authority beyond the municipality for purposes of establishing a public utility. See Ohio Const. art. XVIII, §4; *Britt v. City of Columbus*, 38 Ohio St. 2d 1, 309 N.E.2d 412 (1974). Statutory provisions governing the appropriation of property by a municipal corporation appear in R.C. Chapter 719. See, e.g., R.C. 719.01; R.C. 719.012; R.C. 719.04.

A taking by eminent domain has generally been treated as a proceeding *in rem*, with the compensation awarded for the property taking the place of the property for purposes of distribution, as appropriate, among persons who own interests in the property. *Sowers v. Schaeffer*, 152 Ohio St. 65, 87 N.E.2d 257 (1949) (syllabus, paragraph 2), sets forth the general rule:

A proceeding to appropriate property for a public use is essentially *in rem*, and where property is sought in which separate interests or estates are owned by several persons, as between the condemner and

<sup>2</sup> It is not clear whether the opinion request relates to situations that occurred under prior law, but it is my understanding that controversies involving such situations may exist. The general principles discussed in this opinion appear to be applicable to such situations, even though certain provisions of statutory law have changed.

<sup>3</sup> Statutory provisions governing eminent domain proceedings undertaken by the state differ somewhat from those governing appropriations by political subdivisions. See, e.g., R.C. 319.20; R.C. 5713.08(C). Since your request relates to a city, this opinion considers appropriations by such a political subdivision and does not address appropriations by the state.

the owners it is regarded as one estate and *one offer or award as compensation for the entire land and the interests connected therewith is made, which sum takes the place of the property appropriated as the equivalent thereof.* The division and distribution of the sum offered and accepted or of the award made among the owners of separate interests or estates rests wholly with them, and the condemner has no concern therewith. (Emphasis added.)

*Accord, e.g., Alliance Towers, Ltd. v. Stark County Board of Revision*, 37 Ohio St. 3d 16, 23, 523 N.E.2d 826, 832 (1988); *Ohio Sand & Gravel Co. v. Masheter*, 176 Ohio St. 327, 329, 199 N.E.2d 573, 575 (1964); *Board of County Commissioners v. Thormyer*, 169 Ohio St. 291, 159 N.E.2d 612 (1959) (syllabus, paragraph 2).

## II. Real Property Taxes

Under Ohio law, real property taxes are taxes upon land, and not upon the owner of the land. *See Southern Ohio Savings Bank & Trust Co. v. Polce*, 165 Ohio St. 201, 135 N.E.2d 382 (1956); 1987 Op. Att'y Gen. No. 87-075. A lien for taxes attaches to the real property on January first of each year, or as otherwise provided, and continues "until such taxes, including any penalties, interest, or other charges accruing thereon, are paid." R.C. 323.11; *see Makley v. Whitmore*, 61 Ohio St. 587, 56 N.E. 461 (1900); *Long v. Moler*, 5 Ohio St. 271 (1855); Op. No. 87-075. If real property taxes are not paid when due, a lien for delinquent taxes remains attached to the land. *See R.C. 323.11.*

It has been established that, when a governmental body has a tax lien upon real property, that body has a claim that is adverse to the property owners and such claim should, to the extent possible, be paid from an appropriation award. *See City of Cincinnati v. Jones*, 24 Ohio C.C. (n.s.) 374, 379 (Ct. App. Hamilton County 1915) (finding that it was not necessary for the county treasurer to be a party to appropriation proceedings: "He was simply the ministerial agent of the state to receive the taxes, and it was the duty of the court to see that the state taxes were paid out of the proceeds on distribution..."). In fact, the opinion request indicates that, in the situations in question, the county's claims against the appropriation awards for taxes due on the properties were protected under R.C. 163.18 by the fact that the county treasurer and county auditor were named as defendants in the petitions for appropriation. The judgment entries in question order that the landowners pay from the amount deposited any taxes required to be paid pursuant to law. It is, thus, clear that, in each case, the county was entitled to a portion of the appropriation award to pay the tax deficiency owing on the appropriated property. *See generally, e.g., Boyle v. Middleburgh Realty Co.*, 75 Ohio App. 368, 62 N.E.2d 262 (Cuyahoga County 1944). What is not clear is whether the amount of a tax lien that remains unpaid from appropriation proceeds because the appropriation award was not sufficient to pay the lien in full is extinguished by the existence of the proceedings.<sup>4</sup>

## III. Liability for Tax Delinquency

The question whether the county prosecutor may bring proceedings to recover the tax delinquency upon the properties appropriated by the City of Cleveland appears to be resolved by the language that appears in each judgment

<sup>4</sup> It has been held that, if proceeds of a judicial sale are insufficient to pay all taxes due, the taxes remain a lien against the real estate until paid. *See, e.g., R.C. 323.11; R.C. 323.47; Southern Ohio Savings Bank & Trust Co. v. Bolce*, 165 Ohio St. 201, 135 N.E.2d 382 (1956); *Grafton v. Mong*, 134 Ohio St. 416, 17 N.E.2d 649 (1938); *Marini v. Roach*, 54 Ohio App. 2d 114, 375 N.E.2d 808 (Stark County 1976); *Canton Bank & Trust Co. v. M.M. Smith-Martindale Co.*, 62 Ohio App. 550, 24 N.E.2d 836 (Stark County 1939). An eminent domain proceeding is not a judicial sale for purposes of this type of analysis. *See City of Cincinnati v. Jones*, 24 Ohio C.C. (n.s.) 374, 379 (Ct. App. Hamilton County 1915); *City of Cincinnati v. Burnet*, 17 Ohio Dec. 800 (C.P. Hamilton County 1906).

entry, stating that it is ordered, adjudged and decreed that the fee simple title in the premises "is duly vested in the City of Cleveland, free and clear of the claims of the owners of said land and any person or persons having an interest therein, to-wit:....Francis E. Gaul, Cuyahoga County Treasurer; and Timothy McCormack, Cuyahoga County Auditor." This language indicates that the city took the property free and clear of claims of the county treasurer and auditor. Therefore, the county may not make a successful claim against the city for taxes that were due at the time of the judgment entry.<sup>5</sup>

Further, it does not appear that there is any other person against whom the county may make a successful claim for such taxes. As discussed above, a taking by eminent domain is an *in rem* proceeding, with the proceeds taking the place of the land, and claims against the land being transferred to the proceeds. An action for real property taxes is, similarly, a proceeding *in rem*; it operates upon the land itself, and not upon the owner. See *Hunter v. Grier*, 173 Ohio St. 158, 180 N.E.2d 603 (1962); 1943 Op. Att'y Gen. No. 5841, p. 89 (syllabus, paragraph 3) ("[r]eal property taxes are levied against the property itself and payment thereof can not be enforced as a personal obligation against the owner or a lessee of such property"). Under Ohio law, an individual is not personally liable for real property taxes except in a few specified instances under recently-enacted provisions. See Am. Sub. H.B. 387, 118th Gen. A. (1990) (eff. July 18, 1990); 1987-1988 Ohio Laws, Part III, 4583 (Am. Sub. H.B. 603, eff. June 24, 1988). Those provisions permit a court to enter a deficiency judgment against the owner of record of a parcel for the unpaid amount, if the proceeds from the sale of a parcel in a foreclosure or forfeiture proceeding are insufficient to pay in full the amount of the taxes, assessments, charges, penalties, and interest. See R.C. 5721.17; R.C. 5721.19; R.C. 5723.05; R.C. 5723.10; R.C. 5723.18.<sup>6</sup> There are no analogous provisions that permit the entry of a judgment *in personam* against the prior owner of real property after a taking by eminent domain. It appears, therefore, that the taking by eminent domain and the judgment entry under consideration effectively preclude the county from making a successful claim to recover the tax delinquency.

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<sup>5</sup> For purposes of this opinion, I am assuming that the judgment entry is valid and that it will not be overturned or modified by the court in any subsequent action. See generally, e.g., *Marini v. Roach*, 54 Ohio App. 2d 114, 375 N.E.2d 808 (Stark County 1976) (reversing decision of lower court that tax lien be released and discharged where it had not been paid in full from proceeds of a sale by an administrator to pay debts); *Canon Bank & Trust Co. v. M.M. Smith-Martindale Co.*, 62 Ohio App. 550, 24 N.E.2d 836 (Stark County 1939) (finding that lower court lacked authority to order satisfaction of tax liens when proceeds of a foreclosure sale by a receiver were insufficient to pay the liens in full, even though the county treasurer had been made a party to the suit).

<sup>6</sup> R.C. 5721.192, initially enacted in 1987-1988 Ohio Laws, Part III, 4583 (Am. Sub. H.B. 603, eff. June 24, 1988), sets forth factors to be considered in determining whether to enter a deficiency judgment, as follows:

(C) In determining whether to enter the deficiency judgment, the court shall consider all relevant factors, including, but not limited to, the following:

(1) Whether the owner of record or, in the case of forfeited lands, the last owner of record, appears to have owned the parcel only for speculative purposes, and had the means to pay, but purposely did not pay, the taxes, assessments, charges, penalties, and interest due;

(2) Whether the owner of record or, in the case of forfeited lands, the last owner of record purposely failed to pay the delinquent taxes, assessments, charges, penalties, and interest, although he had the means to do so;

(3) Whether there are other circumstances that would make it inequitable to enter the deficiency judgment.

#### IV. Extinguishment of the Lien

The question whether the lien on the property was extinguished because of the appropriation proceedings is more problematical. It is commonly stated that, under Ohio law, a tax lien remains until it is paid in full. See R.C. 323.11 ("[t]he lien of the state for taxes...shall...continue until such taxes, including any penalties, interest, or other charges accruing thereon, are paid"); *Monroe v. Doe*, 7 Ohio 262, pt. 1, at 265 (1835) (a tax lien upon real estate "can be removed in no other way than by the payment of all taxes, penalties, and interest due upon the land"). It is, however, clear that a lien may be extinguished by means other than payment in full where properly authorized, as for example, in the case of forfeiture and foreclosure proceedings. See, e.g., *Marini v. Roach*, 54 Ohio App. 2d 114, 117, 375 N.E.2d 808, 810 (Stark County 1976) ("[t]he lien for taxes...attaches to all real estate and continues until such taxes with penalties are paid, or are extinguished by forfeiture or foreclosure").

##### A. Statutory Authorization

Certain statutes expressly provide for the release of tax liens without their payment in full. See, e.g., R.C. 323.28 ("[f]rom the proceeds of the [foreclosure] sale the costs shall be first paid, next the amount found due for taxes..., all of which taxes shall be deemed satisfied, though the amount applicable to them is deficient....Upon sale...all liens for taxes...shall be deemed satisfied and discharged..."); R.C. 5721.19 (if "the amount of proceeds to be applied to pay the taxes, assessments, charges, penalties, interest, and costs is insufficient to pay them in full, and the court does not enter a deficiency judgment against the owner of record pursuant to this division, the taxes, assessments, charges, penalties, interest, and costs shall be deemed satisfied").

##### B. Implied Statutory Authorization

In other cases, the release of a tax lien is implied from the fact that the purchaser takes title free from the lien. For example, R.C. 5723.06 permits forfeited land to be sold, in certain circumstances, for "the best price obtainable," even if that amount is not sufficient to pay all delinquent taxes, and states that such a sale shall convey title to the tract or parcel of land, "divested of all liability for any taxes, assessments, charges, penalties, interest, and costs due at the time of sale, which remain after applying the amount for which it was sold." A sale pursuant to R.C. Chapter 5723 provides the purchaser with a title free from the lien for delinquent taxes and from other liens as specified in R.C. 5723.12. No statute expressly provides for satisfaction of the tax lien when there is a sale under R.C. Chapter 5723, but such satisfaction appears to be implied by the statutory scheme. R.C. 5722.15,<sup>7</sup> which applies to land reutilization programs under R.C. Chapter 5722, states:

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<sup>7</sup> I note that an alternative to appropriation by eminent domain proceedings is available for land acquisition in certain circumstances. R.C. Chapter 5722 provides for a county, township, or municipal corporation to implement a land reutilization program "to foster either the return of...nonproductive land to tax revenue generating status or the devotion thereof to public use." R.C. 5722.02. Pursuant to such a program, an electing subdivision may purchase delinquent or forfeited lands without making any payment for such property at the time of purchase. R.C. 5722.03; R.C. 5722.04. Express authority is granted for the county auditor to "remove from his tax lists and duplicates all taxes, assessments, charges, penalties, and interest that are due and payable on the land at the time of the sale," R.C. 5722.15; such amounts may be paid later from proceeds obtained from a subsequent sale of the land, if sufficient proceeds are available, see R.C. 5722.08; R.C. 5722.15. See also R.C. 5722.10. Implementation of a land reutilization program under R.C. Chapter 5722, rather than a taking by eminent domain, would thus avoid the issues involving delinquent taxes that are addressed in this opinion.

(A) When an electing subdivision purchases nonproductive land under section 5722.03 or 5722.04 of the Revised Code, the county auditor shall remove from his tax lists and duplicates all taxes, assessments, charges, penalties, and interest that are due and payable on the land at the time of the sale in the same manner as if the property had been sold to any other buyer at the foreclosure or forfeiture sale. (Emphasis added.)

Since R.C. 5722.04 relates to sales of forfeited lands under R.C. Chapter 5723, it appears that the General Assembly intended that, following a forfeiture sale, any tax lien would be deemed satisfied, and the taxes, assessments, charges, penalties, and interest would be removed from the tax lists and duplicates. *Accord, e.g., State ex rel. City of South Euclid v. Zangerle*, 145 Ohio St. 433, 62 N.E.2d 160 (1945); 1948 Op. Att'y Gen. No. 3392, p. 314; 1939 Op. Att'y Gen. No. 192, vol. 1, p. 237; see also R.C. 5723.10. The release of the lien thus appears to be reasonably implied from the fact that the purchaser takes title free from that lien.

I am aware of no statute that states expressly that a tax lien is released upon a taking by eminent domain, or that authorizes a county auditor to remove from the tax list taxes charged against land that has been taken in an eminent domain proceeding when the appropriation proceeds are not sufficient to pay the taxes in full. Where a taking by eminent domain grants the taker a fee simple title, free and clear of all claims, it does, however, appear to be implied that any underlying tax lien must be released, and that action may be taken to reflect such release upon the tax list and duplicate. *See, e.g., City of Cincinnati v. Hynicka*, 9 Ohio N.P. (n.s.) 273 (C.P. Hamilton County), *aff'd*, 84 Ohio St. 446, 95 N.E. 1145 (1909) (the county auditor is the state's agent with responsibility for assuring that taxes listed on the tax list and duplicate are correct); 1983 Op. Att'y Gen. No. 83-045 at 2-177 ("I believe that the provisions of R.C. 319.35 which authorize the auditor to correct clerical errors in the tax list and duplicate allow the auditor to make such changes once either a court or the legislature has determined that such charges are not due"). *See generally, e.g.,* 1988 Op. Att'y Gen. No. 88-077; 1932 Op. Att'y Gen. No. 4524, vol. II, p. 890. *But see Monroe v. Gemeiner*, 45 Ohio Op. 504, 101 N.E.2d 178 (C.P. Cuyahoga County 1951) (the owner of land sold at a tax foreclosure sale may not purchase the property for less than the amount of the tax lien and be entitled to the removal from the tax list of the amount left unpaid); 1967 Op. Att'y Gen. No. 67-035 (syllabus, paragraph 4) ("[t]he county auditor has been granted no authority, under either [R.C. 319.20 or R.C. 5713.08], to either exempt real estate from taxation or to order the remission of taxes upon said real estate without the consent of the Board of Tax Appeals when the state acquires real estate in fee simple under Chapter 5501. or 5519., Revised Code, for highway purposes"); 1961 Op. Att'y Gen. No. 2410, p. 399 (finding that there was no statutory authority for the removal of delinquent taxes from the tax duplicate when the state acquired a perpetual easement by eminent domain, even though foreclosure of the lien would be of no avail).

### C. Implied Authorization from the Nature of Eminent Domain

It has been stated as a general rule that, under Ohio law, the taking of property by eminent domain does not, in itself extinguish a tax lien. *See, e.g.,* 38 Ohio Jur. 3d *Eminent Domain* §372 (1982), at 522 ("[w]hile the condemnor is entitled to have the property free and clear of all encumbrances, including tax liens, which have attached to the property, a lien for taxes is not divested by condemnation proceedings, and taxes which have become a lien on the appropriated real property on the date title passed to the condemnor remain a lien until paid") (footnotes omitted). This general rule is based primarily upon the case of *City of Cincinnati v. Jones*, in which the court stated that "the lien for taxes is not divested by condemnation proceedings." 24 Ohio C.C. (n.s.) at 379. *See also Muskingum Watershed Conservancy District v. Frautschy*, 4 Ohio Op. 394 (P.C. Tuscarawas County 1935).<sup>8</sup> The statement that a tax lien is not divested by

<sup>8</sup> *Muskingum Watershed Conservancy District v. Frautschy*, 4 Ohio Op. 394, 395 (P.Ct. Tuscarawas County 1935), states:

condemnation proceedings was made in support of the proposition that taxes should be paid from an appropriation award; the *Jones* case did not consider the possibility that such an award might not be sufficient to satisfy the lien. The authorities cited for that proposition in the *Jones* case are consistent with the proposition that a tax lien should be paid from an appropriation award. See *State ex rel. Mortgage and Trust Co. v. Godfrey*, 20 Ohio C.C. 649 (Cir. Ct. Lucas County 1900), *rev'd*, 62 Ohio St. 18, 56 N.E. 482 (1900) (dealing with a tax sale and mortgage foreclosure, rather than a taking by eminent domain); *State v. Missouri Pacific Railway Co.*, 75 Neb. 4, 105 N.W. 983 (1905) (finding that a tax lien was not divested by condemnation for railroad purposes, and that lien holders must be made parties in order to have their interests divested); *In re Sleeper*, 62 N.J. Eq. 67, 49 A. 549 (1901) (finding that, when a railroad company acquires land by condemnation, it is entitled to have all liens upon the land, including tax liens, paid from the fund); 2 J. Lewis, *A Treatise on the Law of Eminent Domain in the United States* (3d ed. 1909) §524, at 951-52 (expressing the proposition that a lien will follow the fund and may be enforced against the fund).

Further, *City of Cincinnati v. Jones* also contains the following language:

The city of Cincinnati was entitled to have the property appropriated clear and free of all encumbrances including the lien for taxes which had attached when it took possession of the property. It was entitled to have what it bargained for under its proceedings to appropriate—an absolute fee simple title, clear and free of liens and encumbrances. *In re Sleeper*, 62 N.J. L., 67.

If it were required to pay the taxes in addition to the condemnation money, then it would be paying for the property more than the amount awarded to the owners by the verdict of the jury.

24 Ohio C.C. (n.s.) at 379.

As discussed above, Ohio real property taxes are imposed upon the land, rather than upon an individual. Thus, in an appropriation proceeding, the owner from whom the land is appropriated is not personally liable for the payment of a tax lien. The statement that the appropriating party takes the property free and clear of a tax lien appears to be inconsistent with the statement that appropriation proceedings do not divest the lien. The apparent inconsistencies may be resolved if it is concluded that, although the lien for taxes is not divested by the appropriation proceeding, the lien transfers to the appropriation fund. When the fund is exhausted, the lien is deemed to have been satisfied. See, e.g., 1962 Op. Att'y Gen. No. 3068, p. 447, at 452 ("the lien for taxes is not divested by the appropriation proceeding, and the lien transfers to the fund"). This principle finds support in the proposition that, in an eminent domain proceeding, a governmental entity should pay no more than the value of the property as awarded by the jury. See, e.g., Ohio Const. art. I, §19; *Sowers v. Schaeffer*, 155 Ohio St. 454, 99 N.E.2d 313 (1951).

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When a corporation appropriates property it is entitled to have the property free and clear of the lien for taxes which have attached when it takes possession.

The lien of the state for taxes is not divested by condemnation proceedings, and taxes which have become a lien still remain a lien unless paid at the time of appropriation. (*Cincinnati v. Jones*, 24 C.C. (N.S.) 374).

Taxes which have become a lien may be deducted from the compensation awarded, but the court is not required to do so on its own motion if no order is made relative thereto.

In the context of the *Frautschy* case, the second of the quoted paragraphs means simply that a tax lien is not automatically divested by the existence of condemnation proceedings: the case allows a lien to be paid from appropriation proceeds (and thus extinguished) where appropriate procedures are followed.

#### V. Tax Exemption

I note that statutes dealing with tax exemption appear to require that delinquent taxes be paid in full before tax exemption may be granted, and provide no exceptions for property taken by eminent domain. *See, e.g.*; R.C. 319.201; R.C. 5709.08; R.C. 5713.08; R.C. 5713.081 ("[o]n and after January 1, 1969, all taxes, penalties, and interest, that are more than one year delinquent, appearing on the general tax list and duplicate of real property which have been levied and assessed against parcels of real property owned by the state, any political subdivision, or any other entity whose ownership of real property would constitute public ownership thereof, shall be collected by the county auditor of the county where the real property is located"); *City of Cleveland v. Carney*, 168 Ohio St. 533, 156 N.E.2d 730 (1959); *City of Cincinnati v. Jones*, 24 Ohio C.C. (n.s.) at 379 ("[t]he property could not be placed on the exempted list when the city acquired it [by eminent domain] on September 28, 1912, until it had first satisfied the then existing lien for the taxes for the year 1912"); *In re Penn Central Transportation Co.*, 383 F.Supp. 1128, 1130 (E.D. Pa. 1974) ("[i]t appears [under Ohio law] that unless and until all back taxes on the condemned properties are paid, the Port Authority cannot obtain tax-exempt status with respect to those properties"). Taxes may not be remitted for more than one year, and may not be remitted if they became a lien before the property was first used for the exempt purpose or prior to the date of acquisition of the title by the city. *See* R.C. 5713.08-.081; *City of Cleveland v. Limbach*, 40 Ohio St. 3d 295, 533 N.E.2d 336 (1988); *see also* R.C. 5703.05. You have not inquired about the status of the property in question with regard to tax exemption, and I am not addressing that issue.

It is, therefore, my opinion, and you are hereby advised:

1. When a city takes real property through eminent domain proceedings and obtains a judgment entry stating that the fee simple title is vested in the city free and clear of the claims of the owners and any person having an interest in the property, including the county treasurer and county auditor, the county is effectively precluded from making a successful claim to recover any tax delinquency remaining after proceeds of the taking have been applied to taxes due.
2. A taking by eminent domain is an *in rem* proceeding in which claims for delinquent real property taxes are transferred from the property itself to the award made by a jury for acquisition of the property.
3. The question whether a tax lien on real property is released by a taking by eminent domain when the award returned by the jury is insufficient to satisfy the real estate tax delinquency is not clearly established under Ohio law; it appears, however, that such release may be implied from the nature of a taking by eminent domain.