

2100.

LANDS—FORECLOSURE SALE FOR DELINQUENT TAXES—ASSESSMENTS MANDATORY ON COUNTY TREASURER—THOUGH INSUFFICIENT TO PAY COSTS.

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, May 15, 1928.

HON. J. R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“I am informed by the county treasurer of Defiance County, Ohio, that there are sixty-seven parcels and lots of land in this county which have been certified as delinquent and that there are on file in his office requests from the Auditor of State that the above parcels of land be sold. These requests were sent to our county treasurer in the year 1922 and nothing has been done regarding the matter up to the present time.

Investigation of these cases reveals that perhaps sixty of the sixty-seven parcels would not bring a sufficient amount of money to pay the court costs for the necessary foreclosure proceedings.

Our county treasurer, Mr. McCormick, met with the Tax Commission yesterday at Napoleon, Ohio, and laid before them these cases and was informed that the foreclosure and sale of these unredeemed land tax certificates was the only method at hand by which these premises could be removed from the tax duplicate. This would appear to be an unnecessary and useless expenditure of money, and it is doubtful whether in most instances the premises would sell at all.

We have been disposing of various parcels of land whenever we feel and are informed that there are persons who will bid upon the same, and who will pay enough to at least save the county the court costs and to get the lands back on the tax duplicate.

Will you please inform me whether or not we must proceed with the sale of these parcels of land regardless of whether or not we will be able to get enough money from the sale of the same to pay the court costs of the various transactions or whether there is some other method of disposing of these cases without taking them through the courts.”

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. The balance of the proceeds after the payment of the costs and the judgment for taxes, assessments, penalties and interest, shall be distributed according to law. 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. (Section 5717, General Code).

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. The amount of taxes involved in said suit is determined from the delinquent land tax certificate, and the decree for taxes, assessments and penalties covers only what appears due and unpaid on said certificate. The only authority that the county treasurer has for bringing foreclosure proceedings against delinquent land is the said land tax certificate so issued to him by the county auditor, and the foreclosure proceedings and the sale of the property are for the purpose of paying the taxes and assessments as specified in said delinquent land tax certificate, and the interest and penalties thereon.

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, 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, which respectively provide as follows:

Sec. 5748. “The lands, inlots, outlots, and parts of lots, which are forfeited to the state for the non-payment of taxes, or otherwise, shall be sold and disposed of by the state agreeably to the provisions of this chapter.”

Sec. 5750. “The Auditor of State, annually, shall enter in the book provided for in the next preceding section, all lands forfeited to the state for the non-payment of taxes. The several county auditors, once in two years, between the first Monday of September and the first day of October, shall make a list of all forfeited lands and lots, and forward it to the Auditor of State, who, after comparing it with the record of forfeited lands in his office, and correcting any errors or omissions therein, shall return it to the several county auditors, who shall sell the forfeited lands and lots, agreeably to the provisions of this chapter. Lands and lots so forfeited, which, for any cause have not been, so offered, shall be offered for sale under the provisions of this chapter, and if not sold for want of bidders, shall be again advertised and offered for sale by the county auditor, at the next subsequent sales by him made, under this chapter, until such lands and lots are sold.”

Sec. 5755. “If a tract or parcel of land does not sell at such public sale for an amount sufficient to pay the taxes and penalty which stand against it, the auditor shall return it as unsold, to be retained upon the list of forfeited lands, to be offered for sale the next succeeding sale as other forfeited lands. If such tract or parcel of land is offered for sale at two succeeding sales, and still remains unsold, the commissioners of the county in which it is situated, at their regular annual session in June preceding the next regular sale, if in their opinion it is of less value than the amount of taxes and penalties due upon it, having fixed a minimum price therefor, may order the auditor of the county to offer it for sale at the next regular sale of forfeited lands, and sell it to the highest and best bidder therefor, at not less than said minimum price, irre-

spective of the amount of taxes and penalty, due upon it. Such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes or penalty which remain after applying the amount thereon for which it was sold."

Specifically answering your question, it is my opinion that it is the duty of the county treasurer to proceed to foreclose the lien of the state upon the delinquent parcels of land referred to in your letter, regardless of whether said various parcels of land can be sold for enough to pay the necessary court costs, there being no other method of enforcing the tax liens in question.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2101.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE NEW YORK CENTRAL RAILROAD COMPANY FOR THE RECONSTRUCTION OF A BRIDGE, NEAR RUSHVILLE, FAIRFIELD COUNTY, OHIO.

COLUMBUS, OHIO, May 15, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by and through George F. Schlesinger, as Director of Highways, as first party and the New York Central Railroad Company as second party.

This contract pertains to the reconstruction of a bridge over the tracks of the New York Central Railroad Company on State Highway No. 10, Section P-1, near Rushville, Fairfield County, Ohio.

I have carefully examined said contract, and finding it in proper legal form, I hereby approve and return the same herewith to you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2102.

APPROVAL, RESOLUTION FOR SALE OF ABANDONED CANAL LAND, IN AKRON, OHIO.

COLUMBUS, OHIO, May 15, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of May 5, 1928, enclosing for my approval resolution, in duplicate, for the sale of the following abandoned canal land:

"Situate in the city of Akron, Summit County, Ohio, and lying in the rear of Lot No. 3, of Block 21, of Kings' Addition to the city of Akron, and described as follows: