

1851.

COUNTY TREASURER—AUTHORITY TO CONTRACT FOR COLLECTION  
OF DELINQUENT TAXES ON REAL ESTATE DISCUSSED.

SYLLABUS:

*A county treasurer can not legally contract with any person to collect delinquent taxes on real estate on a percentage basis not exceeding twenty-five per cent of the amount collected, even though the contract is approved by the county commissioners, unless said delinquent real estate has become forfeited to the state by reason of the unpaid taxes thereon.*

COLUMBUS, OHIO, March 14, 1928.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

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

“I should like to have your opinion on the following proposition:

Can a county treasurer legally contract with some person to collect delinquent taxes on real estate on a percentage basis not exceeding 25% of the amount collected, provided the contract is approved by the county commissioners?”

You evidently base your inquiry upon the provisions of Section 2672 of the General Code which reads as follows:

“When lands or lots or parcels thereof, advertised for and offered at both delinquent and forfeited tax sales and returned as unsold at both, have become forfeited to the state by reason of the unpaid taxes thereon, the county treasurer may contract with a suitable person to collect the taxes or assessments thereon at a compensation deemed just and proper, subject to the approval of the county commissioners, but not to exceed twenty-five per cent of the amount collected and shall be payable therefrom. Such allowances shall be apportioned ratably by the county auditor, among the funds entitled to share in the distribution of such taxes, and the expense of collection under the contract shall be borne by the person so contracting, who may proceed under this and the preceding section, or as otherwise provided by law.”

It is noted, however, that this section limits the authority of the county treasurer to contract for the collection of taxes and assessments after the lands or lots or parcels thereof have been advertised for and offered at both delinquent and forfeited tax sales, returned as unsold at both, and have therefore become forfeited to the state by reason of the unpaid taxes thereon.

Procedure is prescribed by statute for the collection of delinquent taxes on real estate.

Section 5704, General Code, reads in part as follows:

“Each county auditor shall cause a list of delinquent lands in his county to be published once a week for two consecutive weeks, between the

twentieth day of December and the second Thursday in February, next ensuing, \* \* \* There shall be attached to the list a notice that the delinquent lands will be certified to the Auditor of State as delinquent, as provided by law."

Section 5705, General Code, provides that:

"Delinquent lands as defined in this act (G. C. Sections 5704 to 5727) shall mean all lands upon which the taxes, assessments and penalties have not been paid for two consecutive semi-annual tax paying periods."

Section 5711, General Code, provides as follows:

"The county auditor shall send by mail, to the auditor of the state, one paper containing a list of delinquent lands, and a copy of the account of the printer, as sworn to by him, and allowed by the auditor."

Section 5712, General Code, provides in part as follows:

"The county treasurer, or his deputy, and the county auditor, or his deputy, shall attend at the court house in the county, on the second Tuesday in February, in conformity with the notice prescribed in the first section of this chapter, and at and after the hour of ten in the forenoon, the county auditor or his deputy shall proceed to make, in triplicate, a certificate to be known as a delinquent land tax certificate, for each tract of land, city or town lot or part of lot contained in such advertisement, on which the taxes, assessments and penalty have not been paid. \* \* \* "

Section 5713, General Code, reads as follows:

"The state shall have a first and best lien on the premises described in said certification, for the amount of taxes, assessments and penalty, together with interest thereon at the rate of eight per cent per annum, from the date of delinquency to the date or (of) redemption thereof, and the additional charge of twenty-five cents for the making of said certification, and sixty cents for advertising. If the taxes have not been paid for four consecutive years, the state shall have the right to institute foreclosure proceedings thereon, in the same manner as is now or hereafter may be provided by law, for foreclosure of mortgages on land in this state, and there shall be taxed by the court as costs in the foreclosure proceedings instituted on said certification, the cost of an abstract or certificate of title to the property described in said certification, if the same be required by the court, to be paid into the general fund of the county treasurer."

Section 5718, General Code, reads as follows:

"It shall be 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, and a certified copy thereof shall at the same time be delivered to the county treasurer, and 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; it shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his petition that the certificate has been duly filed by the county auditor; that the amount of money appearing to be due and unpaid, thereby is due and unpaid and a lien against the property therein described, and the prayer of the petition shall be, that the court make an order that said property be sold by the sheriff of the county in the manner provided by law for the sale of real estate on execution. And the treasurer need not set forth any other or further special matter relating thereto. The certified copy of said delinquent land tax certificate, filed with the county treasurer, as hereinbefore provided, 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, plus the amount of eighty-five cents due from the defendants for the delinquency of each year, for the advertising and issuance of certificates, and of the non-payment thereof, without setting forth in his petition any other or further special matter relating thereto."

It is provided in Section 5719, General Code, that:

"Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty, interest and costs, for the payment of which, the court shall order such premises to be sold without appraisement. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes, assessments, penalties and interest and the balance shall be distributed according to law. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action. When the land or lots stand charged on the tax duplicate as certified delinquent to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through, and represented by the county treasurer."

Under the provisions of the foregoing sections it is evident that it is the duty of the county treasurer to proceed to collect the delinquent taxes and no authority is therein contained whereby the county treasurer may contract with any person or persons for the collection of the same.

Section 2667, 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 duty of the county treasurer when requested by the Auditor of State to enforce the lien of the taxes or assessments

and the penalty 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, and in said 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 penalty 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. Said 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.”

Under the provisions of Section 2672, General Code, *supra*, the county treasurer subject to the approval of the county commissioners may contract with a suitable person to collect the taxes or assessments on lands, lots or parcels thereof which have become forfeited to the state by reason of the unpaid taxes thereon. The compensation of said collectors shall be payable from said taxes and shall not exceed twenty-five per cent of the amount collected.

Specifically answering your question it is my opinion that a county treasurer can not legally contract with any person to collect delinquent taxes on real estate on a percentage basis not exceeding twenty-five percent of the amount collected, even though the contract is approved by the county commissioners, unless said delinquent real estate has become forfeited to the state by reason of the unpaid taxes thereon.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1852.

MARRIAGE—AUTHORITY OF JUSTICE OF THE PEACE TO SOLEMNIZE  
MARRIAGES—WHERE LICENSE IS OBTAINED.

*SYLLABUS:*

1. *By the terms of Section 11182, General Code, a justice of the peace has jurisdiction to solemnize marriages within the county in which he was elected justice of the peace.*

2. *Section 11186, General Code, requires a marriage license to be obtained in the county where the female resides. No section of the General Code requires a marriage to be solemnized in the county where the license therefor is obtained.*

COLUMBUS, OHIO, March 14, 1928.

HON. RALPH E. HOSKOT, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge your letter dated March 12, 1928, which reads:

“We respectfully ask your opinion in the following matter: